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(Minn)

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SUPREME COURT OF THE UNITED STATES.

No. ~~139~~. 62.

CHRISTIAN ~~FEARNS~~ FARNI and PETER ~~FEARNS~~ FARNI, Appellants,

vs.

EDWARD P. TESSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

GIDEON, Printer.

Arg'd. Jany 6/62

Decided

11 Jany/62

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PLEAS in the Circuit Court of the United States of America for the Northern District of Illinois, held at the city of Chicago, in said district, before the Hon. Thomas Drummond, District Judge of said district, and in the absence, pro tempore, of the Hon. John McLean, one of the justices of the Supreme Court of the United States, sole judge of said Circuit Court, on Wednesday, the twenty-sixth day of October, in the October adjourned term of said court, in the year of our Lord one thousand eight hundred and fifty-nine, and of our Independence the eighty-fourth year.

WILLIAM H. BRADLEY, Clerk.

EDWARD P. TESSON, survivor, &c.,
vs.
CHRISTIAN FARRIS and PETER FARRIS.

Northern District of Illinois, *ss.*

Be it remembered, that on the sixteenth day of December, in the year of our Lord one thousand eight hundred and fifty-eight, came the said plaintiff, by N. H. Purple, his attorney, and filed in the office of the clerk of the Circuit Court of the United States for the Northern District of Illinois, his præcipe and affidavit, praying the issue of a writ of capias ad respondendum against the said defendants in a plea of debt. Debt, ten thousand dollars; damages, three thousand dollars. Also, at the same time filed his bond for costs in said entitled cause, which said præcipe, bond for costs, and affidavit, are in the words and figures following, to wit:—

In the Circuit Court of the United States for the Northern District of Illinois, December Term, A. D. 1858.

EDWARD P. TESSON, surviving partner of the late firm of Tesson and Danjen,
vs.
CHRISTIAN FARRIS and PETER FARRIS.

Issue capias ad respondendum in this cause, returnable according to law in an action of debt on bond. Debt, $10,000
Damages, 3,000

Wm. H. Bradley, Esq., Clerk, &c., Dec. 14, 1858.

N. H. PURPLE, Pl'ff's Att'y.

United States of America, Northern District of Illinois, *ss.*

Circuit Court, December Term, A. D. 1858.

EDWARD P. TESSON, survivor, &c.,
vs.
CHRISTIAN FARRIS, PETER FARRIS.
For capias ad respondendum.

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or

to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, I hereby agree and stipulate that execution may issue against my property for any costs taxed against him.

Dated this 13th day of December, A. D. 1858.

N. H. PURPLE.

State and Northern District of Illinois, Peoria County, *ss.*

Edward P. Tesson, who is a citizen of the State of Missouri, and surviving partner of the late firm of Tesson and Danjen, of St. Louis, Missouri, aforesaid, being sworn, says that Christian Farris and Peter Farris, who are citizens of the State and Northern District of Illinois, are justly indebted to him, affiant, in the sum of eight thousand six hundred and forty-five dollars ($8,645 00), for money due and unpaid upon a certain injunction bond, a certified copy whereof marked ("A") is hereto attached and made a part of this affidavit. That the said debt, interest and costs in the said suit of Tesson and Danjen in said bond mentioned and described, recovered against the said Boutcum and Carrey, are due and wholly unpaid, and that the said Boutcum and Carrey have, as affiant is informed and believes, no property in this State out of which the same or any part thereof can be made.

Affiant further states, that the injunction which was issued in the cause and suit in the said bond stated, was at the October Term of the Circuit Court of Woodford County (to which county the venue in said cause had been changed) fully dissolved; and that thereupon the complainants in said suit voluntarily dismissed their said bill, by reason whereof the defendants, Christian and Peter Farris, as he is advised, immediately became liable to pay the judgment, interest and costs aforesaid.

Affiant further states, that he is about to commence a suit in the Circuit Court of the United States for the Northern District of Illinois against the said Christian and Peter Farris, to recover the said debt and costs and interest, and that there is danger that the said debt, interest and costs, and whatever judgment the said affiant may obtain against the said Peter and Christian Farris, will be in danger of being lost, unless the said Peter and Christian Farris be held to bail.

Affiant further states, that the said Peter and Christian Farris, since the said injunction has been dissolved, fraudulently, and with the express intention of defrauding and cheating affiant out of his said debt, interest and costs aforesaid, have sold and conveyed all their real and personal estate, which amounts in value to at least the sum of twenty thousand dollars, to their sons; the said Christian to his son Joseph—and the said Peter to his sons Christian P. Farris and Peter P. Farris—without, as this affiant is informed and believes, any real or valuable consideration therefor paid by the said purchasers.

Affiant further states, that at the time of said fraudulent conveyances, which bear date on the 21st and 23d days of October last, they, the said grantees and pretended purchasers, had full information and well knew that the said debt existed in favor of affiant; that the same was due and unpaid, and that said conveyances were made to them with the design and intention of cheating and defrauding affiant out of his debt, interest and costs aforesaid.

Affiant further shows, and states as evidence of said fraudulent intention on the part of said Christian Farris, that before he signed said injunction bond, for the purpose of satisfying the court that he was good and sufficient as security on said bond, he, said Farris, made and signed, before a justice of the peace of Woodford County, an affidavit as follows:—

State of Illinois, Woodford County, *ss.*

Christian Farris, being first duly sworn according to law, deposes and says, that he is worth at least the sum of twenty thousand dollars over and above any indebtedness he owes at present date; that the value of his property, at a low estimate, would amount to fully the above mentioned sum; that his said property consists mainly in real estate, although he owns besides a large amount of personal property.

(Signed in German) CHRISTIAN FARRIS.

Subscribed and sworn before me this ninth day of December, A. D. 1857. JONATHAN McPEEK, J. P.

Affiant further states, that he has reason to believe, and does believe, that the said Joseph, Christian P. and Peter P. Farris, to whom said real and personal estate of said Christian and Peter Farris has been thus fraudulently conveyed, have not paid, nor secured to be paid, any of the purchase-money of the said property, and which for the real estate above described in the deeds, purports to have been twenty-three thousand and five hundred dollars; and also that the personal property purporting to have been sold as aforesaid, amounts in value to at least the sum of one thousand dollars; and further affiant saith not.

EDWARD P. TESSON.

Subscribed and sworn to before me, this 13th day of December, A.D. 1858. Witness my hand and official seal, the day and year aforesaid.

[SEAL.] N. H. PURPLE,
Notary Public, Peoria City, Illinois.

Know all men by these presents, that we, Charles Boutcum, Paul Carrey, Christian Farris, and Peter Farris, are held and firmly bound unto Edward P. Tesson, Antoine L. Danjen, Lamar E. Suber, Peter B. Garesche, and Abia Minor, in the penal sum of seventeen thousand dollars, for the payment of which we hereby bind ourselves

and our personal representatives respectively. Witness our hands and seals this twelfth day of December, A. D. 1857.

The condition of this obligation is such, that whereas the said Boutcum and Carrey have, on the day of the date hereof, sued out and obtained from the Circuit Court of Peoria County, in the State of Illinois, upon a bill in equity exhibited in said court by said Boutcum and Carrey, as complainants against said Edward P. Tesson, Antoine L. Danjen, Lamar E. Suber, Peter B. Garesche, and Abia Minor, as defendants, a writ of injunction under the seal of said court, enjoining and restraining said defendants from doing certain acts in said writ mentioned, and especially enjoining and restraining said defendants, or either of them, from the collection of a certain judgment and execution thereon mentioned for the sum of eight thousand dollars damages and costs of suit, which judgment said Tesson and Danjen recovered against said Boutcum and Carrey, in a certain action at law in said Circuit Court, on the twelfth day of September, A. D. 1857, until said Circuit Court shall make further order in the premises.

Now if the said Boutcum and Carrey shall pay all money and costs due or to be due to said Tesson and Danjen, plaintiffs in said action at law, and also all such costs and damages as shall be awarded against the complainants in said bill in equity, in case said injunction shall be dissolved, then this bond shall be void, otherwise in force.

CHARLES BOUTCUM. [SEAL.]
PAUL CARREY. [SEAL.]
By Charles Boutcum his attorney in fact. [SEAL.]
(In German) CHRISTIAN FARRIS. [SEAL.]
" " PETER FARRIS. [SEAL.]

State of Illinois, Peoria County, *set.*

I, Enoch P. Sloan, clerk of the Circuit Court within and for said county, do hereby certify that the foregoing is a true and correct copy of a bond now on file in my office, in a certain chancery proceeding in said court, wherein Charles Boutcum and Paul Carrey are complainants, and Edward P. Tesson and others are defendants, as the same appears on file in said suit as having been filed on the 24th day of December, instant.

Witness my hand and seal of said court, at Peoria, this 28th day of December, A. D. 1857.

[SEAL.] ENOCH P. SLOAN, Clerk.

Endorsed: Filed December 16th, 1858.
WILLIAM H. BRADLEY, Clerk.

Whereupon a writ of capias ad respondendum was issued against the said defendants, as prayed for, directed to the marshal of the Northern District of Illinois to execute, and was returned by the marshal on the twenty-second day of December, in the year last aforesaid, executed upon the said defendants; which said suit, toge-

ther with the return of the marshal thereon, is in the words and figures following, to wit :—

Circuit Court of the United States of America, Northern District of Illinois, *ss.*

The United States of America to the Marshal of the Northern District of Illinois, greeting :—

We command you that you take Christian Farris and Peter Farris, if they shall be found in your district, and them safely keep, so that you have their bodies before our Judges of our Circuit Court of the United States for the Northern District of Illinois, at the next term thereof, to be holden at Chicago, in the district aforesaid, on the third Monday of December, instant, to answer unto Edward P. Tesson, surviving partner of the late firm of Tesson and Danjen, in a plea of debt for ten thousand dollars, and for their detention of said debt to his damage, as he alleges, of three thousand dollars ; and have you then and there this writ.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 16th day of December, in the year of our Lord one thousand eight hundred and fifty-eight, and of our Independence the 83d year.

[SEAL.] WM. H. BRADLEY, Clerk.

The Marshal will take bail of the defendants in the sum of eighty-six hundred and forty-five dollars. WM. H. BRADLEY, Clerk.

I have executed this writ by arresting the within-named Christian Farris and Peter Farris, defendants, and afterwards released them on bond, this 18th day of December, 1858.

CHARLES N. PINE,
U. S. Marshal Nor. District Ill.
By OWEN DOUGHERTY, Deputy.

Endorsed : Filed Dec. 22d, A. D. 1858.
WM. H. BRADLEY, Clerk.

And afterwards, to wit, on the twenty-eighth day of December, in the year last aforesaid, came again the said plaintiff by his said attorney, and filed in the office of the clerk of said court his declaration against the said defendants in the plea aforesaid, which said declaration is in the words and figures following, to wit :—

In the Circuit Court of the United States for the Northern District of Illinois, December Term, A. D. 1858.

State and Northern District of Illinois, *ss.*

Edward P. Tesson, who is a citizen of the State of Missouri, plaintiff in this suit, complains of Christian Farris and Peter Farris, who are citizens of the State of Illinois, defendants in this suit, of a plea

that they, the said defendants, render to the plaintiff the sum of seventeen thousand dollars, which they, the said defendants, owe to and unjustly detain from the said plaintiff.

For that whereas, heretofore, to wit, on the 12th day of September, A. D. 1857, at the county of Peoria, in a Circuit Court, then and there held in and for said county, by the consideration and judgment of the said court, the said plaintiff and one Antoine L. Danjen, their partners in trade and doing business in St. Louis, in the State of Missouri, under the name, style, and firm of Tesson and Danjen, recovered a judgment against Charles Boutcum and Paul Carrey, who were then citizens and residents of the county of Woodford, in the State of Illinois, for the sum of eight thousand dollars damages and costs of suit, which said judgment was rendered by confession of the said Boutcum and Carrey, by their attorney duly and legally authorized, and the same plaintiff now brings into court here the record of the said judgment, rendered as aforesaid, whereby the same more fully appears.

And whereas, on the 12th day of December, A. D. 1857, the said Boutcum and Carrey, against whom the said judgment was so made, entered and rendered as aforesaid, made and filed in the said Circuit Court of Peoria County their bill in chancery against the plaintiff, the said Antoine L. Danjen, Lamar E. Suber, Peter B. Gorushe, and Abiah Minor, sheriff of the county of Woodford, to which last-named defendant an execution upon said judgment had been duly issued and delivered (a certified copy whereof with the said sheriff's return thereon is now to the court here shown), praying, among other things, for an injunction to restrain the said Tesson and Danjen, and said sheriff, from proceeding to sell any of the real estate levied upon by said execution, and from any manner interfering or meddling with the personal property levied upon by the said execution, as by reference to said bill will fully and at large appear.

And whereas, on the same day and year aforesaid, at the county aforesaid, the said Circuit Court of Peoria County then and there granted and allowed the said injunction as prayed for in the said bill, and ordered the same to be issued, as by reference to the said order and the said injunction now to the court here shown, will fully appear.

And the said plaintiff avers that, in order to secure and indemnify the said Tesson and Danjen for their debt and costs aforesaid, with interest, it was then and there, on the same day and year last aforesaid, ordered and adjudged by said court, that the said Charles Boutcum and Paul Carrey should upon or before the issuing of the said injunction, make, execute and file in said court a bond with the defendants, Christian and Peter *Farney*, as sureties in the penal sum of seventeen thousand dollars, conditioned according to law for the payment of said debt, interest, and costs, in case the said injunction should be dissolved or wrongfully sued out. Whereupon the said defendants and the said Charles Boutcum and Paul Carrey then and there, to wit, on the said 12th day of December, A. D. 1857, at Peo-

ria, in the county of Peoria, to wit, in the State and Northern District of Illinois aforesaid, made, executed, and filed in the said court their certain writing obligatory, signed with their hands and sealed with their seals, and bearing date the day and year aforesaid, and now to the court here shown, which said writing obligatory is in substance as follows, to wit :—

Know all men by these presents, that we, Charles Boutcum, Paul Carrey, and Christian Farris and Peter Farris, are held and firmly bound unto Edward P. Tesson, Antoine L. D. Danjen, Lamar E. Suber, Peter B. Garesche, and Abiah Minor, in the penal sum of seventeen thousand dollars, for the payment of which we hereby bind ourselves and our personal representatives respectively. Witness our hands and seals this twelfth day of December, A. D. 1857.

The condition of this obligation is such that, whereas the said Boutcum and Carrey have on the day of the date hereof sued out and obtained from the Circuit Court of Peoria County, in the State of Illinois, upon a bill in equity exhibited in said court by said Boutcum and Carrey, as complainants, against said Edward P. Tesson, Antoine L. Danjen, Lamar E. Suber, Peter B. Garesche, and Abiah Minor, as defendants, a writ of injunction under the seal of said court, enjoining and restraining said defendants from doing certain acts in said writ mentioned, and especially enjoining and restraining said defendants, or either of them, from the collection of a certain judgment and execution therein mentioned for the sum of eight thousand dollars damages and costs of suit, which judgment said Tesson and Danjen recovered against said Boutcum and Carrey in a certain action at law in said Circuit Court on the 12th day of September, A. D. 1857, until said Circuit Court shall make further order in the premises.

Now if the said Boutcum and Carrey shall pay all money and costs due or to be due to said Tesson and Danjen, plaintiffs in said action at law, and also all such costs and damages as shall be awarded against the complainants in said bill in equity, in case said injunction shall be dissolved, then this bond shall be void, otherwise in force.

CHARLES BOUTCUM. [SEAL.]
PAUL CARREY, [SEAL.]
Per Charles Boutcum, his attorney in fact. [SEAL.]
CHRISTIAN FARRIS. [SEAL.]
PETER FARRIS. [SEAL.]

And the plaintiffs aver that the said Edward P. Tesson and Antoine L. Danjen in said bond described, are the same persons in whose favor the said judgment hereinbefore mentioned, was rendered in the said Circuit Court of Peoria County, and that the said judgment and costs, &c. in the said bond described or referred to, is the same judgment and costs, &c. recited and mentioned in this declaration as having been recovered by the plaintiffs against the said Bout-

cum and Carrey mentioned and described as principals in the bond set forth as aforesaid.

And the said plaintiff further avers that he is the successor and surviving partner of the said firm of Tesson and Danjen, he, the said Danjen, having departed this life since the date and execution of the said writing obligatory.

TESSON
vs.
CHRISTIAN and PETER FARRIS.

Amendment to first count of declaration.

And the said plaintiff avers that he is the only person who has any interest whatever in the judgment, interest and costs aforesaid, which is alone sought to be recovered in this action, and that the other obligees in said bond have no interest whatever in the same or the subject-matter of this suit, and that the said Abiah Minor was the sheriff, who had the execution, the collection of which was enjoined; that Peter B. Geresche was only trustee in a mortgage made by Boutcum and Carrey to said Tesson and Danjen, the collection of which was also enjoined, and that Lamar E. Suber was an agent only for said Tesson and Danjen in the collection of said judgment. January 25th, 1859.

Amendment filed January 25th, 1859.

WM. H. BRADLEY, Clerk.

And the said plaintiff further avers that after the making and execution of the said writing obligatory, to wit, on the 30th day of January, A. D. 1858, the venue in the said suit in chancery, before referred to, upon the application of the defendants in said suit, was changed to the county of Woodford, in the said State of Illinois, as by the record and proceedings in said cause now to the court here shown fully appears.

And that afterwards, to wit, on the 8th day of October, A. D. 1858, at a Circuit Court then and there being held in the said county of Woodford, upon the motion of the defendants in said chancery suit and arguments of counsel, and upon due consideration the said injunction in said chancery suit was dissolved, and thereupon the said complainants then and there dismissed their said bill, as by the record and proceedings, orders and decrees of the said Circuit Court of Woodford County, now to the court here shown, will fully appear.

And the said plaintiff avers that the said defendants, nor the said Boutcum and Carrey, nor any other person or persons have ever paid the said debt, interest, damages, and costs in the said writing obligatory mentioned, nor any part thereof, though often requested so to do, but have hitherto refused, and still do refuse to pay the same, or any part thereof, and the said plaintiff avers that the said debt, damages, interest, and costs aforesaid, now amount to the sum of two thousand dollars.

By reason whereof, the said writing obligatory has become forfeited, an *an* action hath accrued to the said plaintiff to have and demand of the said defendants the said sum of seventeen thousand dollars in the said writing obligatory mentioned above demanded.

Yet the said defendants have not paid the same, nor any part thereof, but have hitherto refused, and still refuse, to the damage of the said plaintiff thirteen thousand dollars, and therefore he brings suit, &c.

And the said plaintiff avers that the plaintiff's claim, and the matters in controversy in this suit, exceed the sum of five thousand dollars. N. H. PURPLE, Pl'ff's Att'y.

The instrument sued on in this case is set forth at large in the plaintiff's declaration. N. H. PURPLE, Pl'ff's Att'y.

Endorsed: Filed Dec. 28th, 1858.

WM. H. BRADLEY, Cl'k.

And afterwards, to wit, on Friday, the seventh day of January, in the year A. D. 1859, in the December Term, A. D. 1858, of said court, the following proceedings were had in said court, in said entitled cause, and entered of record, to wit:—

EDWARD P. TESSON, surviving partner, &c.
vs.
CHRISTIAN FARRIS and PETER FARRIS.

On motion of the plaintiff by his attorney, N. H. Purple, Esq., leave is granted him by the court, to amend his declaration filed herein, which is done.

And afterwards, to wit, on the tenth day of January, in the year last aforesaid, came the said defendants by Messrs. Scammon and Fuller, their attorneys, and filed in the office of the clerk of said court, their demurrer to the plaintiff's declaration in said entitled cause, which said demurrer is in the words and figures following, to wit:—

U. S. Circuit Court, Northern District of Illinois, December Term, A. D. 1858.

EDWARD P. TESSON, surviving partner, &c.
vs.
CHRISTIAN FARRIS, PETER FARRIS, JOSEPH FARRIS, CHRISTIAN P. FARRIS, and PETER P. FARRIS.

And the said defendants by Scammon and Fuller, their attorneys, come and defend the wrong and injury, when, &c., and say that the said declaration, and the matters and things therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof, against the said defendants, and that they, the said defendants, are not bound by law to answer the same, and this

they are ready to verify; wherefore by reason of the insufficiency of the said declaration in this behalf, the said defendants pray judgment, and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof against them.

SCAMMON and FULLER, Att'ys for Def'ts.

Endorsed: Filed January 16, 1859.

WM. H. BRADLEY, Cl'k.

Sustained Jan'y 14th, '59. WM. H. BRADLEY, Cl'k.

And afterwards, to wit, on Friday, the fourteenth day of January, in the year last aforesaid, in the December Term, A. D. 1858, of said court, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:—

EDWARD P. TESSON, surviving partner, &c.,
vs.
CHRISTIAN FARRIS and PETER FARRIS. } Debt.

On motion of the plaintiff, by his attorney, leave is granted him by the court to amend his præcipe and summons herein by changing the claim for debt to seventeen thousand dollars, and the damages to ten thousand dollars in each.

And afterwards, to wit, on the twenty-fifth day of January in the year last aforesaid, came again the said plaintiff, by his said attorney, and filed in the office of the clerk of said court his amended declaration in said entitled cause, which said amended declaration is in the words and figures following, to wit:—

2 Count.

And for that whereas, also, on the day of December, A. D. 1857, at the county of Peoria, Illinois, to wit, at the State and Northern District aforesaid, in the said first and second counts mentioned, the said defendants then and there made their certain writing obligatory, signed with their hands and sealed with their seals, and now to the court here shown, the date whereof is the 12th day of December, A. D. 1857, which said writing obligatory is in substance as follows, to wit:—

Know all men by these presents, that we, Charles Boutcum, Paul Carrey, Christian Farris and Peter Farris, are held and firmly bound unto Edward P. Tesson, Antoine L. Danjen, Lamar E. Suber, Peter B. Gareshe, and Abiah Minor, in the penal sum of seventeen thousand dollars, for the payment of which we hereby bind ourselves and our personal representatives respectively. Witness our hands and seals, this twelfth day of December, A. D. 1857.

The condition of this obligation is such that whereas the said Boutcum and Carrey have, on the day of the date hereof, sued out and obtained from the Circuit Court of Peoria County, in the State of Illinois, upon a bill in equity exhibited in said court by said Boutcum and Carrey, as complainants, against said Edward P. Tesson

and Antoine L. Danjen, Lamar E. Suber, Peter B. Gareshe, and Abiah Minor, as defendants, a writ of injunction under the seal of said court, enjoining and restraining said defendants from doing certain acts in said writ mentioned, and especially enjoining and restraining said defendants, or either of them, from the collection of a certain judgment and execution therein mentioned, for the sum of eight thousand dollars, damages and costs of suit, which judgment said Tesson and Danjen recovered against said Boutcum and Carrey in a certain action at law in said Circuit Court, on the twelfth day of September, A. D. 1857, until said Circuit Court shall make further order in the premises.

Now, if the said Boutcum and Carrey shall pay all money and costs due or to become due to said Tesson and Danjen, plaintiffs in said action at law, and also all such costs and damages as shall be awarded against the complainants in said bill in equity, in case said injunction shall be dissolved, then this bond shall be void, otherwise in force.

CHARLES BOUTCUM. [SEAL.]
PAUL CARREY, [SEAL.]
By Charles Boutcum, his attorney in fact. [SEAL.]

In German:
CHRISTIAN FARRIS. [SEAL.]
PETER FARRIS. [SEAL.]

Which said writing obligatory was after the making and executing the same, and before the commencement of this suit, to wit, on the 24th day of December, A. D. 1857, filed in the office of the clerk of the Circuit Court of Peoria County, Illinois, and then and there delivered to the said plaintiff.

And the said plaintiff avers that the said injunction in the said suit, in the condition of said writing obligatory mentioned, was in due form of law issued, and that thereby the said plaintiff in the said judgment or action at law in said condition mentioned, were enjoined and restrained from proceeding to collect the said judgment and costs or any part thereof, and that afterwards, to wit, on the 8th day of October, A. D. 1858, at a Circuit Court then and there being holden in the county of Woodford, to which said county the venue in the said chancery suit had previous to said time been duly changed by the consideration, judgment and decree of the said court, the said injunction was dissolved, and thereupon the complainants in said chancery suit voluntarily dismissed their said bill.

And the plaintiff avers that he is the successor of the said firm of Edward P. Tesson and Antoine L. Danjen, the plaintiffs in the said judgment and action at law in the condition of the said writing obligatory mentioned, he, the said Antoine L. Danjen, having departed this life after the making of said bond by said defendants, and before the commencement of this suit, and that he is the only person having any legal or equitable interest in the judgment, interest, and costs in the action at law, and the money due upon the same in the con-

dition of the said writing obligatory mentioned, and for the recovery of which only this action is instituted.

That the other obligees in said bond have no interest whatever in the said judgment, interest, and costs aforesaid; that said Abiah Minor was the sheriff who had the execution the collection of which was enjoined; that Peter B. Gareshe was only trustee in a mortgage made by Boutcum and Carrey to said Tesson and Danjen, the collection of which was also enjoined, and that Lamar E. Suber was an agent only for said Tesson and Danjen in the collection of said judgment.

And the said plaintiff avers that neither the said defendants nor the said Boutcum and Carrey, nor any other person, have ever paid the said plaintiff the said judgment, interest, and costs, nor the said money and costs so due to the said Tesson and Danjen in the action at law as aforesaid, in the condition of the said writing obligatory mentioned, nor any part thereof, but have refused and still do refuse so to do; which said money, interest, and costs aforesaid, said plaintiff says amounts to the sum of thirteen thousand dollars, and which sum the plaintiff claims as damages in this suit.

By reason whereof the said writing obligatory has become forfeited and an action hath accrued to the said plaintiff to have and demand of the said defendants the said sum of seventeen thousand dollars above demanded.

Yet the defendants, though often requested, have not paid the same, nor any part thereof, but have refused, and still refuse, to the damage of the said plaintiff thirteen thousand dollars, and therefore they bring suit, &c.

The instrument declared on in this count, is set forth at large in said count. N. H. PURPLE, Plff's Atty.

3 Count.

And for that whereas also heretofore, to wit, on the 12th day of September, A. D. 1857, in the Circuit Court of the County of Peoria, Illinois, the said plaintiff and one Antoine L. Danjen (who is since deceased), then partners in trade and doing business in St. Louis, in the State of Missouri, under the name and firm of Tesson & Danjen, recovered a judgment against Charles Boutcum and Paul Carrey, who were then citizens and residents of the County of Woodford, in the State of Illinois, for the sum of eight thousand dollars and costs of suit; which said judgment was rendered by confession, by the said Boutcum and Carrey, by their attorney duly and legally authorized; and the said plaintiff now brings into court here, the record of the judgment rendered as aforesaid, whereby the same fully appears.

And whereas, on the 12th day of December, A. D. 1857, the said Boutcum and Carrey, against whom the said judgment was so rendered as aforesaid, made and filed in the said Circuit Court of Peoria County aforesaid, their bill in chancery against the said

plaintiffs, the said Antoine L. Danjen, Lamar E. Suber, Peter B. Garesche, and Abiah Minor, Sheriff of the County of Woodford, to which last named defendant an execution upon said judgment had been duly issued and delivered (a certified copy whereof, with the sheriff's return thereon, is now to the court here shown), praying, among other things, for an injunction to restrain the said Tesson and Danjen, and the said sheriff from proceeding to collect the said judgment, interest, and costs aforesaid, and from proceeding to sell any of the real estate levied upon by the said execution, and from in any manner interfering or meddling with the personal property levied upon by the said execution, as by reference to said bill will fully and at large appear.

And whereas, on the same day and year aforesaid, at the county aforesaid, the said Circuit Court of Peoria County then and there granted and allowed the said injunction, as prayed for in the said bill, and ordered the same to be issued, as by reference to the said order and the said injunction, now to the court here shown, will fully appear.

And the said plaintiff avers, that for the purpose of securing the said Tesson and Danjen the payment of their said judgment, interest and costs aforesaid, it was then and there, on the day and year aforesaid, ordered and adjudged by said court, that the said Charles Boutcum and Paul Carrey should make, execute, and file in said court a bond, with the defendants Christian and Peter Farris, as sureties, in the penal sum of seventeen thousand dollars, conditioned according to law. Whereupon the said defendants, and the said Charles Boutcum and Paul Carrey afterwards, to wit, on the day of December, A. D. 1857, at Peoria, in the County of Peoria, to wit, at the State and Northern District of Illinois aforesaid, made, executed, and filed in said court, in the cause and proceedings aforesaid, their certain writing obligatory, signed with their hands and sealed with their seals, and bearing date the said 12th day of December, A. D. 1857, and now to the court here shown, which said writing obligatory is in substance the same writing obligatory as is set forth at large in the first count of this declaration, and to which reference is hereby made.

And the said plaintiff avers, that the said Edward P. Tesson and Antoine L. Danjen, in the said bond described as obligees, are the same persons in whose favor the said judgment hereinbefore mentioned, was rendered in the Circuit Court of Peoria County, and that the money and costs in the conditions of the said bond described or referred to, is the same money and costs due the said plaintiff, recited and maintained in this declaration, as having been recovered by the said Tesson and Danjen in the said Circuit Court of Peoria County against the said Boutcum and Carrey, defendants in said suit, and mentioned and described as principals in the bond set forth as aforesaid.

And the said plaintiff further avers, that he is the successor and

surviving partner of the said firm of Tesson & Danjen, plaintiff in said judgment aforesaid; that the said Antoine L. Danjen has departed this life since the date and execution of the said writing obligatory, and before the commencement of this suit; and that he, the said plaintiff, is now, and hitherto hath been, since the decease of the said Antoine L. Danjen, the only person who has had, or now has any legal or equitable interest in the judgment and costs aforesaid, and the money and costs aforesaid, in the conditions of the said writing obligatory aforesaid mentioned, and that this suit is instituted solely and only for the purpose of recovering the money (interest) and costs, in the conditions of the said writing obligatory mentioned, and which said condition, the said plaintiff avers, is that the said Boutcum and Carrey shall pay all money and costs due, or to be due to said Tesson and Danjen, plaintiffs in said action at law, meaning and intending the judgment, interest and costs, in favor of the said Tesson and Danjen, against the said Boutcum and Carrey aforesaid.

And that the said other obligees in said bond have not now, and never have had, any interest whatever in the said judgment, interest and costs aforesaid; that the said Abiah Minor was the sheriff, who had the execution, the collection of which was enjoined; that Peter B. Garesche was only trustee in a mortgage made by Boutcum and Carrey, to said Tesson and Danjen, the collection of which was also enjoined; and that Lamar E. Suber was an agent only for said Tesson and Danjen in the collection of said judgment.

And the said plaintiff further avers, that after the making and execution of the said writing obligatory by the said defendants, to wit, on the 30th day of January, A. D. 1858, the venue in the said suit in chancery before referred to, upon the application of the defendants in said suit, was changed to the County of Woodford, in the said State of Illinois, as by the record and proceedings in said cause, now to the court here shown, fully appear; and that afterwards, to wit, on the eighth day of October, A. D. 1858, at a Circuit Court then and there being held in the said County of Woodford, upon the motion of the defendants in said chancery suit, and arguments of counsel, and upon due consideration, the said injunction issued in said chancery suit was, by the consideration, judgment, and decree of said court, dissolved; and thereupon the said complainants then and there voluntarily dismissed their said bill, as by the records and proceedings, orders and decrees of the said Circuit Court of Woodford County, now to the court here shown, will fully appear.

And the said plaintiff avers, that neither the said defendants nor the said Boutcum and Carrey, nor either of them, nor any other person, have ever paid the said money, interest, and costs in the condition of the said writing obligatory mentioned (being the judgment interest and costs so recovered by the said Tesson and Danjen against the said Boutcum and Carrey in the Circuit Court of Peoria County aforesaid), nor any part thereof, but have neglected and refused so to do.

And the plaintiff avers, that the said money, interest, and costs, so due to the said plaintiff in the said judgment or action at law, amount to the sum of thirteen thousand dollars, and which sum the plaintiff claims as damages in this suit.

By reason whereof, the said writing obligatory has become forfeited and an action hath accrued to the said plaintiff to have and demand of the said defendants the said sum of seventeen thousand dollars above demanded.

Yet the said defendants, though often requested, have not paid the same nor any part thereof, but have hitherto refused, and still do refuse, to the damage of the said plaintiff thirteen thousand dollars; and therefore he brings suit, &c.

And the said plaintiff avers, that the plaintiff's claim and the matters in controversy in this suit, exceed the sum of five hundred dollars. N. H. PURPLE, Plaintiff's Attorney.

The instrument, declared on in this count, is set forth at large in the first count of this declaration. N. H. PURPLE,
Plaintiff's Attorney.

Endorsed: Filed January 25th, 1859.
WM. H. BRADLEY, Clerk.

And afterwards, to wit, on Thursday, the twenty-seventh day of January in the year last aforesaid, in the December term, A. D. 1858, of said court, the following further proceedings were had in said court in said entitled cause and entered of record, to wit:—

EDWARD P. TESSON, survivor, &c.
vs.
CHRISTIAN FARRIS and PETER FARRIS. } Debt.

On motion of the plaintiff, by his attorney, leave is granted him by the court to amend his declaration, which is done.

And afterwards, to wit, on Friday, the twenty-eighth day of January in the year last aforesaid, in the December term, A. D. 1858, of said court, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:—

EDWARD P. TESSON, survivor, &c.
vs.
CHRISTIAN FARRIS and PETER FARRIS. } Debt.

On motion of the plaintiff by his attorney, it is ordered by the court, that the defendants plead to the plaintiff's amended declaration herein by Monday morning next.

And afterwards, to wit, on Monday, the thirty-first day of January in the year last aforesaid, in the December term, A. D. 1858, of said court, the following further proceedings were had in said court, in said entitled cause, and entered of record, to wit:—

EDWARD P. TESSON, survivor, &c.
vs.
CHRISTIAN FARRIS and PETER FARRIS.

On motion of the defendants by their attorneys, time is given them by the court until Thursday morning next, to elect as to what they will plead.

And afterwards, to wit, on the second day of February in the year last aforesaid, came the parties by their respective attorneys, and filed in the office of the clerk of said court their stipulation in said entitled cause, which said stipulation is in the words and figures following, to wit:—

TESSON
vs.
FARRIS and FARRIS. } U. S. Circuit Court.

The rule to plead in this cause, is by consent of the parties extended for twenty days from the expiration of same, the defendants hereby stipulating to plead to the merits.

Chicago, Feb'y 2, 1859.

N. H. PURPLE, Pl'ff's Att'y, *for Pl'ff.*
S. H. FULLER, for Def'ts.

Endorsed: Filed February 2d, 1859.

WM. H. BRADLEY, Clerk.

And afterwards, to wit, on Thursday the third day of February in the year last aforesaid, in the December term, A. D. 1858, of said court, the following further proceedings were had in said court, in said entitled cause, and entered of record, to wit:—

EDWARD P. TESSON, survivor, &c.
vs.
CHRISTIAN FARRIS and PETER FARRIS. } Debt.

On motion of the plaintiff by his attorney, leave is granted him by the court to substitute Joseph Ladd as security for costs in the place and stead of the present security, which is done accordingly.

Which said subtituted bond for costs, filed in said entitled cause by leave of the court, is in the words and figures following, to wit:—

United States of America, Northern District of Illinois, *ss.*
Circuit Court, December Term, A. D. 1858.

EDWARD P. TESSON, surviving, &c.
vs.
CHRISTIAN FARRIS et al. } In Debt.

I enter myself security for costs in this cause, and promise to pay all costs, which have and which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid

by him, hereby agree and stipulate that execution may issue against my property for any costs taxed against.

Dated this 3d day of February, A. D. 1859.

JOSEPH LADD.

Endorsed: Filed Feb. 3d, A. D. 1859.

WM. H. BRADLEY, Clerk.

And afterwards, to wit, on the twenty-sixth day of February, in the year last aforesaid, came again the said defendants in their own proper person, and filed in the office of the clerk of said court, their plea in said entitled cause, which said plea is in the words and figures following, to wit:—

United States of America, Northern District of Illinois, U. S. Circuit Court, to the March Term, A. D. 1859.

CHRISTIAN FARRIS and PETER FARRIS
vs.
EDWARD P. TESSON.
} 1 Plea.

And the said defendants come into court and say *actio non*, because they say that the said writing obligatory in the said declaration mentioned and set forth, is not the act and deed of the said defendants, nor the act or deed of either of them, and of this they put themselves upon the country, &c. CHRISTIAN FARRIS.

PETER FARRIS.

State of Illinois, County and City of Peoria, ss.

Christian Farris and Peter Farris, the above named defendants, being duly affirmed, say, that the foregoing plea is true in substance and in fact. They say in explanation of this affidavit, that the said writing obligatory was never in any manner delivered by them or either of them, nor by any person for them or either of them, to the said obligees therein mentioned, or any or either of them, or to any person or persons for the use of said obligees, or any or either of them; and that the said defendants have not, nor has either of them in any manner ever acknowledged or approved said writing obligatory as an obligation to said obligees, or any or either of them, in any manner whatever. CHRISTIAN FARRIS.

PETER FARRIS.

State of Illinois, County and City of Peoria.

I, Henry M. Peck, a notary public in and for said County, City, and State, do hereby certify that this day, personally appeared before me the above named Christian Farris and Peter Farris, and severally subscribed the foregoing affidavit, and affirmed severally in due form of law, that the said affidavit and the statements therein contained, is and are true in substance and in fact.

In witness whereof I have hereto subscribed my name and affixed my official seal, this 19th day of February, A. D. 1859.

[SEAL.] HENRY M. PECK, Notary Public.

Endorsed: Filed Feb'y 26, 1859.

WM. H. BRADLEY, Clerk.

And on the same day, to wit, the twenty-sixth day of February in the year last aforesaid, came again the said defendants by Messrs. Manning and Merriman, and Samuel W. Fuller, Esq., their attorneys, and filed in the office of the clerk of said court their second and fifth pleas in said entitled cause, which said second and fifth pleas are in the words and figures following, to wit:—

In the Circuit Court of the United States for the Northern District of Illinois, March Term, A. D. 1859.

EDWARD P. TESSON
vs.
CHRISTIAN FARRIS, PETER FARRIS. } Debt.

And for further plea in this behalf, defendants say *actio non*, because they say that on or about the first day of December A. D. 1858, and before the commencement of this suit, the said Boutcum and Carrey, against whom the plaintiff and said Danjen recovered their said judgment in said writing obligatory and declaration mentioned, fully paid and satisfied the same, together with all damages in the premises, to the plaintiff, according to the form and effect of the condition of the said writing obligatory mentioned, to wit, at the County of Woodford in said northern district aforesaid, and this they are ready to verify. Wherefore they pray judgment if the plaintiff ought to have or maintain his aforesaid action thereof, &c.

MANNING and MERRIMAN, Att'ys for Def'ts.
SAM'L W. FULLER, Att'y for Def'ts.

5. And for further plea in this behalf, the defendants say *actio non*, because they say that after the recovery of said judgment by said Tesson and Danjen, against said Boutcum and Carrey, and before the commencement of this suit, to wit, on the twelfth day of September A. D. 1857, the suit Tesson and Danjen caused to be issued on said judgment, out of and under the seal of said Circuit Court of Peoria County, a writ of fieri facias, directed to the sheriff of said County of Woodford to execute, commanding said sheriff in substance that out of the lands and tenements, goods and chattels of said Boutcum and Carrey, in said last mentioned county, he should make said damages and costs; that said writ of fieri facias came to the hands of said sheriff on the sixteenth day of September A. D. 1857, and that afterwards, on the eighteenth day of November A. D. 1857, said sheriff levied the same on the following described lands and tenements of the said Boutcum and Carrey, to wit: A tract or parcel of land situate on the waters of Mackinaw River, in the County of

Woodford and State of Illinois, being ten and $\frac{50}{100}$ acres off the south end, a tract of thirty and $\frac{1}{2}$ acres, formerly owned by Joseph Majon, commencing at the south E. corner of said lot of ground at a stake on the south bank of said river, thence west variating 80 thirty-five $\frac{50}{100}$ poles to a stake 29 poles south of mill-dam, thence north forty-seven $\frac{33}{100}$ poles to a stake, it being the southwest corner of a five acre lot owned by James Finley, thence east with said Finley's south line $35\frac{50}{100}$ poles to a stake, thence south $47\frac{32}{100}$ poles to the beginning; also the following described land in said county, commencing at the qr. sec. corner between sec. 16 and 17, thence W. $151\frac{50}{100}$ poles to the Mackinaw River, thence with said river 3 chains to a stake, thence south 66, east 162 poles, being the south E. corner N. E. qr. of the S. E. qr. of said sec. 16, town. 25 N. R. W., thence north 80 poles to the beginning, containing 40 acres more or less.

And also on the following described goods and chattels, the property of said Boutcum and Carrey, to wit: thirty head of oxen, two two-horse wagons, four ox wagons, one gray stallion horse, one gray mare, two sorrel horses, one cream colored horse, one black mare, 100 bushels malt, 180 bushels wheat, 250 bushels corn, 150 bushels rye, 34 empty whiskey barrels, 1500 staves, 1 set coopers' tools, 1 set blacksmiths' tools, 1 iron safe, 1 cow, 1 clock, 200 bushels coal, 100 sacks, and also the entire stock of merchandise housed in the storehouse occupied by the said Boutcum and Carrey.

That afterwards, to wit, on the 16th day of November, A. D. 1858, said Tesson, as survivor of said Danjen, caused an alias writ of fieri facias or venditioni exponas to be issued on said judgment, commanding said sheriff in substance to sell said lands and tenements, and out of the proceeds thereof to pay said judgment and costs. That afterwards, on the day of , A. D. 1858, said last mentioned writ came to the hands of said sheriff, and that afterwards, on the eighth day of December, A. D. 1858, said sheriff sold said lands and tenements at public sale to said Tesson, for the sum of $1500. That said goods and chattels remain wholly undisposed of by said sheriff, as by said just mentioned writ, he was commanded to do, as by the said writ with the endorsements and return of said sheriff thereon written, remaining of record in said Circuit Court of Peoria County (duly exemplified copies whereof respectively are now shown to the court), will appear, and that said goods and chattels were of great value, to wit, of the value of $1700, and which sum was more than the amount of the said judgment in favor of said Tesson against said Boutcum and Carrey, together with the costs thereon, and that said property was of value sufficient to satisfy the whole of said judgment and costs, and this they are ready to verify; wherefore they pray judgment, &c.

MANNING and MERRIMAN, Att'ys for Def'ts.
SAM'L W. FULLER, Att'y for Def'ts.

Endorsed: Filed Feb'y 26, 1859.

WM. H. BRADLEY, Cl'k.

And afterwards, to wit, on the first day of March, in the year last aforesaid, came again the said plaintiff by his said attorney, and filed in the office of the clerk of said court, his replications to the first, second, and fifth pleas of the said defendants in said entitled cause, which said replications are in the words and figures following, to wit:—

In the Circuit Court of the United States, for the Northern District of Illinois.

EDWARD P. TESSON
vs.
PETER FARRIS and CHRISTIAN FARRIS.

And the said plaintiff, for replication to the said defendants' first plea, and whereof the said defendants have put themselves upon the country, doth the like. N. H. PURPLE, Plff's Att'y.

And for replication to said defendants' second plea, the plaintiff says precludi non, because he says that the said Boutcum and Carrey, against whom the plaintiff and said Danjen recovered the said judgment, in the said writing obligatory and declaration mentioned, did not pay the said judgment, nor any part thereof, at any time, in manner and form as stated in said plea, and of this the said plaintiff puts himself upon the country, &c. N. H. PURPLE,
Plaintiff's Attorney.

And defendants do the like, &c.
MANNING and
MERRIMAN & FULLER, for Def'ts.

And for further replication to said fifth plea, the said plaintiff says, precludi non, because, he says that, as to the personal property levied on, as in said plea mentioned, by the order and injunction of the Circuit Court of Peoria County, Illinois, in which court the said judgment in said plea mentioned was rendered, the said plaintiff and said Danjen and the said Minor, sheriff of the county of Woodford aforesaid, were strictly, wholly, and absolutely restrained and enjoined from selling, or in any manner interfering with the personal property levied upon by the said execution in said plea mentioned, and the same being and remaining in the possession of the said Boutcum and Carrey, were by and with the knowledge, consent, advice, and assent of the said defendants in this suit converted and disposed of to the use of the said Boutcum and Carrey, and to the use of the said defendants, and this the said plaintiff is ready to verify; wherefore he prays judgment, &c.
N. H. PURPLE, Plaintiff's Attorney.

And for further replication to so much of said fifth plea as relates to the sale of real estate on the judgment and execution in favor of the plaintiff and against the said Boutcum and Carrey, the plaintiff says, precludi non, because he says, that there were prior liens to the

lien of his said judgment against the said real estate, amounting, in all, to more than six thousand dollars; and that all the money arising from said sale was in fact and in law necessarily applied upon and in part as an extinguishment of said prior liens, and this he is ready to verify; wherefore he prays judgment, &c.

N. H. PURPLE, Plaintiff's Attorney.

And for further replication to said fifth plea plaintiff says, precludi non, because, he says, that the said supposed executions in said plea mentioned were not issued and levied upon property of value sufficient to satisfy said plaintiff's judgment and costs in manner and form as stated in said plea, and of this he puts himself upon the country, &c. N. H. PURPLE, Plaintiff's Attorney.

And defendants do the like, &c.

MANNING and MERRIMAN, for Def'ts.

Endorsed: Filed March 1st, 1859. WM. H. BRADLEY, Cl'k.

And afterwards, to wit, on Wednesday, the eleventh day of May, in the May adjourned term of said court in the year last aforesaid, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:—

EDWARD P. TESSON
vs.
CHRISTIAN FARRIS and PETER FARRIS. } Debt.

On motion of the defendants by their attorneys, it is ordered by the court that a commission issue to cross-examine the witnesses whose depositions *de bene esse* have been taken by the plaintiff and filed herein.

And afterwards, to wit, on the third day of June in the year last aforesaid, came again the said defendants by Fuller, their attorney, and filed in the office of the clerk of said court their rejoinder to the first replication of said plaintiff to defendants' fifth plea in said entitled cause, which said rejoinder is in the words and figures following, to wit:—

CHRISTIAN FARRIS and PETER FARRIS
ads.
TESSON.

And for rejoinder to the first replication to defendants' fifth plea, defendants say *actio non*, because they say that they and said Boutcum and Carrey did not convert and dispose of said personal property to their own use, and of this they put themselves upon the country, &c. FULLER, p. D.

Plaintiff doth the like. PURPLE, for Plaintiff.

Endorsed: Filed June 3, 1859.

W. H. BRADLEY, Clerk.

And on the same day, to wit, on the third day of June, in the year last aforesaid, came the said defendants by their said attorney,

and filed in the office of the clerk of said court their sixth plea in said entitled cause; also, at the same time, came again the said plaintiff by his said attorney and filed the replication to said plea, which said plea and replication are in the words and figures following, to wit:—

TESSON
vs.
CHRISTIAN FARRIS and PETER FARRIS. } 6th plea.

And for further plea in this behalf the defendants say plaintiff *actio non*, because, they say, the several writings obligatory in the plaintiff's declaration mentioned, and each of them, was made without any good or valuable consideration, and this the defendants are ready to verify; wherefore, &c. FULLER, p. D.

Plaintiff says, said bond was not given without any good and valuable consideration, and of this he puts himself upon the country, &c. PURPLE, for Pl'ff.

And defendants do the like, &c.
MANNING and MERRIMAN, for Def'ts.

Endorsed: Filed June 3, 1859.
WM. H. BRADLEY, Clerk.

And on the same day, to wit, the third day of June in the year last aforesaid, came again the parties by their attorneys and filed in the office of the clerk of said court the following stipulation in said entitled cause, to wit:—

EDWARD P. TESSON
vs.
CHRISTIAN FARRIS and PETER FARRIS. }

The defendants agree that, on the trial, plaintiff may prove anything in relation to the application of the amount of his bid at the sale of real estate as mentioned in defendants' fifth plea which could legally be proven under any good pleading.

FULLER and LINCOLN, p. D.
PURPLE, HOYNE, and MILLER, for Pl'ff.

Endorsed: Filed June 3, 1859.
WM. H. BRADLEY, Clerk.

And on the same day, to wit, on Friday the third day of June, in the May adjourned term of said court, in the year last aforesaid, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:—

EDWARD P. TESSON, surviving partner of
TESSON and DANJEN,
vs.
CHRISTIAN FARRIS and PETER FARRIS. } Debt.

Now come the parties by their attorneys, and the court, having

fully considered and being now fully advised, overruled the demurrer to the first replication to the fifth plea; and the defendants thereupon withdraw their demurrer, and, by leave of the court, file a rejoinder to said replication; and as to the demurrer to second replication to fifth plea, the court sustains the same; and as to said replication and the issue thereon, a stipulation is filed by the parties, and the issue being joined thereupon, come a jury of good and lawful men, to wit, S. D. Lame, Charles M. Chase, Wm. Thomas, James S. Steen, M. A. Mulliner, James Tookey, Henry Dupuy, S. W. Strum, Thomas Robinson, James Garfield, James D. McKio, and Morgan L. Keith, who were duly elected, tried, and sworn, well and truly to try said issue, and, the hour of adjournment having arrived, the further trial herein is postponed until to-morrow morning.

And afterwards, to wit, on Saturday, the fourth day of June, in the May adjourned term of said court in the year last aforesaid, the following further proceedings were had in the said court in said entitled cause and entered of record, to wit:—

EDWARD P. TESSON, surviving partner, &c.
vs.
CHRISTIAN FARRIS and PETER FARRIS. } Debt.

And come again the parties by their attorneys, and now come also the jury heretofore empanelled in this cause, and, after hearing the evidence, the hour of adjournment having arrived, the further trial of this cause is postponed until Monday morning next.

And afterwards, to wit, on Monday, the sixth day of June, in the May adjourned term of said court in the year last aforesaid, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:—

EDWARD P. TESSON, surviving partner, &c.
vs.
CHRISTIAN FARRIS and PETER FARRIS. } Debt.

Now come again the parties by their attorneys, and now come also the jury heretofore empanelled in this cause, and after hearing the arguments of counsel, the further consideration herein is postponed until to-morrow morning.

And afterwards, to wit, on Tuesday, the seventh day of June, in the May adjourned Term of said court, in the year last aforesaid, the following further proceedings were had in said court, in said entitled cause, and entered of record, to wit:—

EDWARD P. TESSON, surviving partner, &c.
vs.
CHRISTIAN FARRIS and PETER FARRIS. } Debt.

Now come again the parties by their attorneys, and now come also the jury heretofore empanelled in this cause, and after receiving instructions from the court, the jury retired to consider of their

verdict; and after a short absence, they returned into court the following verdict, to wit: We, the jury, find the issue for the plaintiff. We find his debt, in the writing obligatory upon which this suit is instituted, at seventeen thousand dollars; and we assess the plaintiff's damages at the sum of seven thousand three hundred and ninety-four dollars and ninety-two cents; whereupon the defendants, by their attorneys, moved the court for a new trial herein, and in arrest of judgment.

And afterwards, to wit, on Saturday, the eighteenth day of June, in the May adjourned Term of said court, in the year last aforesaid, the following further proceedings were had in said court, in said entitled cause, and entered of record, to wit:—

EDWARD P. TESSON, surviving partner, &c.
vs.
CHRISTIAN FARRIS and PETER FARRIS. } Debt.

Now comes on to be heard the motion heretofore made in arrest of judgment herein, and the court, after hearing the arguments of counsel, takes the same under advisement.

And afterwards, to wit, on Wednesday, the twenty-sixth day of October, in the October adjourned Term of said court, in the year last aforesaid, the following further proceedings were had in said court, in said entitled cause, and entered of record, to wit:—

EDWARD P. TESSON, survivor, &c.
vs.
CHRISTIAN FARRIS and PETER FARRIS. } Debt.

The court having fully considered, and being now fully advised upon the motion of the defendants heretofore made herein, for a new trial of this cause, and in arrest of judgment, overrules the same. To which ruling of the court, the defendants, by their attorneys, except.

It is, therefore, considered and adjudged by the court, that the plaintiff have and recover of the defendants the said sum of seventeen thousand dollars debt, together with the said sum of seven thousand three hundred and ninety-four dollars and ninety-two cents damages, so as aforesaid found and reported by the jury; and that he have execution for said debt, to be satisfied and discharged upon the marshal's marking thereon the amount of said damages, with interest thereon, together with his costs by him about his suit in this behalf expended, amounting to the sum of seventy-six dollars and sixty-five cents, and that he have execution therefor.

On the trial of the above entitled cause, the following exceptions were made and allowed, to wit:—

In the Circuit Court of the United States, in and for the Northern District of Illinois, May Term, 1859.

EDWARD P. TESSON
vs.
CHRISTIAN FARRIS and PETER FARRIS. } In debt on injunction bond.

Be it remembered, that on the trial of this cause, the plaintiff, after having, among other things, proved that an injunction, such as is described in the bond now presently to be mentioned, had been issued on the 12th day of December, 1857, offered to read in evidence a bond, in the words and figures following, to wit:—

Know all men by these presents, that we, Charles Boutcum, Paul Carrey, Christian Farris and Peter Farris, are held and firmly bound unto Edward P. Tesson, Antoine L. Danjen, Lamar E. Suber, Peter B. Gareshe, and Abiah Minor, in the penal sum of seventeen thousand dollars, for the payment of which we hereby bind ourselves and our personal representatives respectively. Witness our hands and seals this twelfth day of December, A. D. 1857.

The condition of this obligation is such, that whereas the said Boutcum and Carrey have, on the day of the date hereof, sued out and obtained from the Circuit Court of Peoria County, in the State of Illinois, upon a bill in equity, exhibited to said court by said Boutcum and Carrey as complainants against said Edward P. Tesson and Antoine L. Danjen, Lamar E. Suber, Peter B. Garesche, and Abiah Minor, as defendants, a writ of injunction under the seal of said court, enjoining and restraining said defendants from doing certain acts in said writ mentioned, and especially enjoining and restraining said defendants, or either of them, from the collection of a certain judgment and execution therein mentioned, for the sum of eight thousand dollars, damages and costs of suit, which judgment said Tesson and Danjen recovered against said Boutcum and Carrey in a certain action at law, in said Circuit Court, on the twelfth day of September, A. D. 1857, until said Circuit Court shall make further order in the premises.

Now if the said Boutcum and Carrey shall pay all money and costs due, or to be due, to said Tesson and Danjen, plaintiffs in said action at law, and also all such costs and damages as shall be awarded against the complainants in said bill in equity, in case said injunction shall be dissolved, then this bond shall be void, otherwise in force.

CHARLES BOUTCUM. [SEAL.]
PAUL CARREY, [SEAL.]
By Charles Boutcum, his attorney in fact. [SEAL.]

In German: CHRISTIAN FARRIS. [SEAL.]
" " PETER FARRIS. [SEAL.]

Endorsed: Filed Dec. 24, 1857. ENOCH P. SLOAN, Clk.

Which bond had upon it a mark of filing, in the words and figures following, to wit: Filed Dec. 24, 1857.

ENOCH P. SLOAN, Cl'k.

That the defendants admitted their signatures to said bond, but objected to its being read to the jury unless the plaintiff would first prove that it had been accepted as a valid and sufficient bond, filed in due time either by the obligees or by the court or judge thereof wherein the injunction suit was pending, and for the further reason that the suit is by one only of the several obligees in the bond [as to this last objection, see note added by the court], both which objections the court overruled, and the bond was read to the jury, and to all which the defendants then and there excepted.

Be it further remembered, that after all the evidence was before the court and jury, and arguments of counsel heard, it being fully proved that the bond sued on was both made and filed not until *after* the injunction was issued, and being insisted by defendants that there is evidence tending to prove that said bond had never before the dissolution of the injunction been accepted either by the obligees named therein, nor by either court or judge thereof in which said injunction suit at any time was pending, the defendants prayed the court to instruct the jury:

That if they believe from the evidence the bond sued on was never before the injunction was dissolved *accepted* by the obligees named therein, nor by either court or the judge thereof in which the injunction suit was at any time pending, then they are to find their verdict for the defendants.

That if they believe from the evidence the bond sued on was never before the injunction was dissolved *accepted*, to have the same effect in saving the injunction as if it had been filed before the injunction was issued by the obligees named therein, nor by either court or the judge thereof, in which the injunction suit was at any time pending, then they are to find their verdict for the defendants.

Both of which instructions the court then and there refused to give, and to which refusal the defendants then and there excepted.

Be it also remembered, that being insisted by the defendants that there is evidence tending to prove that when the bond now sued on was filed with the clerk in the injunction suit after the injunction issued, all as aforesaid, it was so placed with the clerk by the counsel of the complainants in the injunction suit, with intent of procuring the opposite party or the court to accept it, and give it the same effect towards saving the injunction as if it had been filed before the injunction issued, and that soon after counsel of defendants in the injunction suit had notice of the fact of filing and of the intent, and thenceforward sought to hold the bond so far as it purports to bind the makers, and to reject it so far as it might operate to save the injunction, the defendants upon this part of the evidence prayed the court to instruct the jury:

That the bond sued on, in order to be binding upon the defendants herein, must have been *delivered*, and that such delivery in this case in the sense of the law, included and required an *acceptance* of the bond by the obligees, or by the court or judge, as well as the *parting* with it by the makers and their counsel, and that the mere filing the bond with the clerk by the counsel of the makers, with intent of procuring the opposite party or the court to accept it and give it the same effect towards saving the injunction as if it had been filed before the injunction issued, is not a delivery in law.

That if the bond sued on was so filed with such intent, and plaintiff herein, or his counsel in the injunction suit, obtained knowledge of the fact of filing and of the intent at the same time, and said counsel with such knowledge attempted to hold said bond so far as it purported to bind the makers, and to reject it so far as it might operate to save the injunction, such attempt was no acceptance of the bond in the sense of the law, and for any effect of such attempt the bond is still undelivered.

Both of which instructions the court refused to give, and to which refusal the defendants then and there excepted.

The court, as to the delivery of the bond and its acceptance, rejected the various instructions asked by the defendants' counsel, and, as to that part of the case, referred to the facts and instructed the jury substantially as follows:—

There is no very serious controversy as to the main facts in this case.

Tesson and Danjen recovered a judgment against Boutcum and Carrey in the Circuit Court of Peoria County, on the 12th Sept., 1857, for $8,000; on the same day an execution was issued directed to Woodford County, and a levy soon after made on real and personal property. On the 12th December, 1857, a bill was filed on the equity side of that court by Boutcum and Carrey against the parties to that judgment, and asking that it be enjoined, &c. The judge directed an injunction to issue upon these defendants being given as sureties in a bond according to law. A bond was filed which it is conceded was not in compliance with the order of the judge. The writ of injunction issued on the 12th, and was served on the 15th of December, and thereupon the sheriff of Woodford County left the personal property in the hands of Boutcum and Carrey, after the injunction was issued and served; a motion was made to dissolve the injunction for the reason, among others, that there was no sufficient injunction bond; thereupon the counsel of the plaintiffs in that suit procured the bond in suit here to be executed by the parties to it, and placed it in the hands of their counsel, and by him it was handed to the clerk of the Circuit Court, as he thinks, with the request that it be filed, and on the 24th of December it was endorsed "filed" by the clerk; this was done by the counsel without the permission or authority of the court, and without the consent of the counsel of the defendants to the bill. The defendants, after the

filing of the bond, made a written motion to dissolve the injunction, &c., one of the reasons being because no sufficient bond was filed prior to the issuing of the writ. No action was taken by the court on this motion at that time: afterwards, in January, 1858, and in vacation, and before the judge at chambers, in the absence of the defendants' counsel, the counsel of the plaintiffs in the bill made a motion for leave to file an injunction bond. A memorandum of this seems to have been filed in court January 30th, but no action ever appears to have been taken on this motion at any time, either in Peoria, or in Woodford, to which the case went by change of venue. In March, 1858, the motion to dissolve the injunction, &c., was argued and taken under advisement. In October, 1858, the injunction was dissolved, and after some time the plaintiffs dismissed their bill. After this a writ of venditioni exponas was issued, to sell the real estate levied on, and at the sale Mr. Tesson purchased it in for $1,500. Such are the leading features of the case. I have omitted some details, but the outline is sufficiently clear and distinct to state the principles of law which are applicable. The controversy turns of course upon the validity of the bond in suit. It is insisted by the defendants that there never was in contemplation of law under the facts proved, a delivery of the bond, for the reason that there was no act of acceptance by the defendants in the chancery suit of the bond, no positive acquiescence in the act of the obligors of the bond, no waiver of that part of the motion to dissolve the injunction founded on an insufficient bond, and no act of the court or of the judge upon this bond of the 24th December sanctioning the same.

It becomes necessary therefore to determine as a matter of law, whether any positive action was necessary, either on the part of the court or of the defendants in the chancery suit, in order to give the bond validity, as against the obligors under the circumstances mentioned. The court adverts to the facts of the case, but of course they are for the jury to find under the evidence; under the law, no injunction was to issue until a bond with sufficient surety, was filed with the clerk conditioned in a particular way.

If the jury shall find that the bond sued on was executed by the obligors as an indemnity to the defendants in the chancery suit, and placed by their counsel voluntarily in court for that purpose on account of the injunction issued, and with a view of supplying a defect in the original bond, and was given to the clerk for that purpose by these defendants or by any one for them, and was filed by him under their instructions, then this court is of opinion, in the absence of any positive act on the part of the State Court or of the defendants in the chancery suit rejecting the bond, it would be binding on the defendants.

It is said that the plaintiffs in the chancery suit, received no benefit from this bond thus filed. That in one sense may be true, but they had already received the benefit by the issuing of the injunction, and it was not unreasonable that the parties should desire to

place themselves so far as practicable, in the position they would have been if a good bond had been originally filed. This is not like the case where all the parties are volunteers. In the injunction suit, the defendants and the plaintiffs were adversaries throughout; from the beginning to the end the defendants were resisting the injunction. If this second bond had not been filed, I apprehend there could be no doubt that Tesson and Danjen could have resisted the original bond and objected to it, and yet if they had done so upon the same principle that is pressed here, they could not have sued on it, because the law makes the clerk the agent of the parties only to receive a good and statutory bond, and it might be said with the same reason in that case as here, that the party could not sue on it unless he accepted it or the court received it.

To the giving of which charge and instruction, the defendants there and there excepted.

Be it further remembered that the following is the whole evidence in the cause, to wit:—

By plaintiff in opening.

Be it remembered that on the twelfth day of September, in the year of our Lord one thousand eight hundred and fifty-seven, there was filed in the office of the clerk of the Circuit Court of Peoria County, State of Illinois, a power of attorney, together with affidavit of L. E. Suber, proving the execution thereof, which power of attorney and affidavit are in the words and figures following, to wit:—

(Power Attorney.)

Whereas, we the undersigned Charles Boutcum and Paul Carrey, partners in trade under the name and style of Boutcum and Carrey, are justly indebted unto Edward P. Tesson and Antoine L. Danjen, partners in trade under the name and style of Tesson and Danjen, in the full sum of eight thousand dollars ($8000).

Now, therefore, in consideration of the premises, we, the said Charles Boutcum and Paul Carrey do hereby make, constitute, and appoint any attorney of any court of record of the State of Illinois, our true and lawful attorney in fact, for us and in our name, place, and stead to waive service of process on us, and to enter our appearance in any court of record in said State, either in term time or in vacation, and to confess a judgment against us and in favor of the said Edward P. Tesson and Antoine L. Danjen for said sum of eight thousand dollars ($8000), with interest thereon from this date.

And in consideration of the premises aforesaid, we do hereby waive all right of redemption (which we may have by virtue of the laws of the State of Illinois) to any real estate which may be sold by virtue of any execution, which may be issued upon the judgment entered by virtue hereof; intending hereby to make any and all sales of real estate under said judgment absolute and without redemption. And we do further, also, release and waive all right which we may have to any real estate (which we or either of us may

at any time own), by virtue of any exemption law of the State of Illinois, agreeing hereby not to claim the benefit of any such law as against this judgment; hereby releasing all errors in the entering up of the judgment by virtue hereof, and agreeing not to prosecute any appeal or writ of error, from the judgment to be entered up by virtue hereof, to the Supreme Court of the State of Illinois.

In witness whereof, we have hereunto set our hands and seals this the tenth day of September, A. D. 1857.

CHARLES BOUTCUM. [SEAL.]
PAUL CARREY. [SEAL.]

"Our true and lawful attorney in fact," interlined between 13th and 14th lines from the top, on first page, before signing.

Witness—L. E. SUBER. L. G. PRATT.

(Proof.)

State of Illinois, Peoria County, *ss.*

Lamar Suber, being first duly sworn, doth depose and say, that he knows Charles Boutcum and Paul Carrey; that he was present and saw said Boutcum and Carrey sign, seal, and deliver the foregoing power of attorney, as and for the uses and purposes therein expressed. L. E. SUBER.

Subscribed and sworn to before me, this the eleventh day of September, A. D. 1857. N. H. PURPLE,
Notary Public, Peoria City, Illinois.

State of Illinois, Peoria County, *ss.*

I, Enoch P. Sloan, Clerk of the Circuit Court of said county, do hereby certify that the foregoing is a true and correct copy of a power of attorney and affidavit, filed in my office on the 12th day of September, A. D. 1857, pertaining to and forming a part of the record in case of Edward P. Tesson and Antoine L. Danjen against Charles Boutcum and Paul Carrey, on confession of judgment in vacation on same day, as same now remains on file in my office.

Witness my hand and seal of said court, this 15th day of December, A. D. 1858.

[SEAL.] ENOCH P. SLOAN, Clerk.
R. H.

"On the twelfth day of September, in the year of our Lord one thousand eight hundred and fifty-seven, there was filed in the office of the Clerk of the Circut Court of Peoria County, Illinois, a declaration, in the words and figures following, to wit:—

(Declaration.)

In the Circuit Court of Peoria County, State of Illinois: In vacation before the November Term, A. D. 1857.

State of Illinois, Peoria County, *ss.*

Edward P. Tesson and Antoine L. Danjen, partners in trade,

under the name, firm and style of Tesson & Danjen, plaintiffs in this suit, complain of Charles Boutcum and Paul Carrey, partners in trade, doing business under the name and style of Boutcum & Carrey, the defendants in this suit, of a plea of trespass on the case on promises.

For that whereas, heretofore, to wit, on the tenth day of September, A. D. 1857, at the county aforesaid, were indebted unto the plaintiffs in the sum of eight thousand dollars, for money then and there loaned by the plaintiffs to the defendants, at their request; and in the sum of eight thousand dollars for money then and there found to be due from the defendants to the plaintiffs, on an account then and there stated between them; and thereupon afterwards, to wit, on the eleventh day of September, A. D. 1857, at the county aforesaid, in consideration of the premises, respectively promised to pay the said several sums of money respectively to the plaintiffs on request. Yet though often requested so to do, the said defendants have not paid the said several sums of money respectively to the plaintiffs, nor any or either of them, or any part thereof, to the plaintiffs' damage eight thousand dollars, and therefore they bring suit, &c. A. H. PURPLE, Plffs' Atty.

State of Illinois, Peoria County, *ss.*

I, Enoch P. Sloan, Clerk of the Circuit Court of said county, do certify that the foregoing is a true and correct copy of a declaration filed in my office on the 12th day of September, A. D. 1857, and forming a part of the record in the case of Edward P. Tesson and Antoine L. Danjen, plaintiffs, against Charles Boutcum and Paul Carrey, defendants, in confession of judgment in vacation, on the same day, as the same remains on file in my office.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at Peoria, this fifteenth day of December, A. D. 1858.

[SEAL.] ENOCH P. SLOAN, Clerk.
R. H.

On the twelfth day of September, in the year of our Lord one thousand eight hundred and fifty-seven, there was filed in the office of the Clerk of the Circuit Court of Peoria County, State of Illinois, a confession of a judgment, in the words and figures following, to wit:—

In the Circuit Court of Peoria County, Illinois, in vacation before the November Term, A. D. 1857.

EDWARD P. TESSON, ANTOINE L. DANJEN,
vs.
CHARLES BOUTCUM, PAUL CARREY. } Assumpsit.

And now comes the said defendants by Lorin G. Pratt, their attorney appointed by power of attorney, herewith filed and not otherwise, and for plea says that true it is they did at the time when, &c.

assume and promise in manner and form as the plaintiffs have above thereof complained against them, and they admit that by reason of the non performance of the said promise and undertakings, the said plaintiffs have sustained damages to the amount of eight thousand dollars, and they do hereby confess judgment in favor of said plaintiff, and against these defendants, for the said sum of eight thousand dollars, which defendants are ready to verify.

CHARLES BOUTCUM.
PAUL CARREY.

By Lorin G. Pratt, their attorney, appointed by virtue of power of attorney, herewith filed.

State of Illinois, Peoria County, *ss.*

I, Enoch P. Sloan, clerk of the Circuit Court in and for said county, do hereby certify that the foregoing is a true and correct copy of a confession filed in my office on the 12th day of September, A. D. 1857, and forming a part of the record in the suit of Edward P. Tesson and Antoine L. Danjen, plaintiffs, against Charles Boutcum and Paul Carrey, defendants, in confession of judgment on same day in vacation, as the same appears on file in said office.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, this 15th day of December, A. D. 1858.

[SEAL.] ENOCH P. SLOAN, Clerk.
R. H.

Proceedings in the Circuit Court, in and for the County of Peoria, in the State of Illinois, in vacation after the May Term of said court, in the year of our Lord one thousand eight hundred and fifty-seven, to wit:—

Saturday, September 12th, A. D. 1857.

EDWARD P. TESSON, ANTOINE L. DANJEN, vs. CHARLES BOUTCUM, PAUL CARREY. } Assumpsit.

On the twelfth day of September, in the year of our Lord one thousand eight hundred and fifty-seven, there was filed in the clerk's office of this court the declaration of the said Edward P. Tesson and Antoine L. Danjen, in this action, by W. H. Purple their attorney, and thereupon Lorin G. Pratt, one of the attorneys of this court, on behalf of the said Charles Boutcum and Paul Carrey, and by virtue of a power of attorney for that purpose executed by the said Charles Boutcum and Paul Carrey, and now produced and filed in said clerk's office, together with the affidavit of L. E. Suber, a respectable witness, proving the due execution of said power of attorney by the said Charles Boutcum and Paul Carrey, filed a plea to said declaration, and therein as to the matters and things in plaintiffs' declaration herein contained, say it is true that they did assume and promise in manner and form as the plaintiffs have declared against them, and that by reason of the non performance

of said promises and undertakings, the plaintiffs have sustained damages to the amount of eight thousand dollars.

Therefore it is considered by the court, that the said Edward P. Tesson and Antoine L. Danjen have and recover of the said Charles Boutcum and Paul Carrey the said sum of eight thousand dollars damages aforesaid, in form aforesaid confessed, and also their costs and charges by them in this behalf expended, and that they have execution therefor.

State of Illinois, Peoria County, *ss.*

I, Enoch *Enoch* P. Sloan, Clerk of the Circuit Court within and for said county, do hereby certify that the foregoing is a true and correct copy of a judgment entered upon the records of said court by confession in vacation after the May term of said court, A. D. 1857, to wit, on the 12th day of September, A. D. 1857, in a certain writ wherein Edward P. Tesson and Antoine L. Danjen are plaintiffs, and Charles Boutcum and Paul Carrey are defendants, as the same now appear of record in my office.

Witness my hand and seal of said court, at my office in Peoria, this 15th day of December, A. D. 1858.

[SEAL.] ENOCH P. SLOAN, Clerk. R. H.

"On the 12th day of September, A. D. 1857, the clerk of the Circuit Court of Peoria County, Illinois, issued an execution to the sheriff of Woodford County against Charles Boutcum and Paul Carrey upon a judgment in favor of Edward P. Tesson and Antoine L. Danjen, which execution and return of sheriff thereon is in the words and figures following, to wit:—

(Execution.)

The people of the State of Illinois to the Sheriff of Woodford County, greeting:—

We command you, that of the goods and chattels, lands and tenements, in your county, of Charles Boutcum and Paul Carrey, you cause to be made the sum of eight thousand dollars damages, and the sum of two dollars and twenty cents costs of suit, which, by the judgment of this our Circuit Court, held at Peoria, in and for the county of Peoria, on the twelfth day of September, in the year of our Lord one thousand eight hundred and fifty-seven, Edward P. Tesson and Antoine L. Danjen recovered against the said Charles Boutcum and Paul Carrey, together with interest thereon at the rate of six per centum per annum from the time of recovering the same as aforesaid, until paid, and also the further sum of sixty-five cents accruing costs on said judgment, and that you have the same ready to render unto the said Edwad P. Tesson and Antoine L. Danjen according to law.

Hereof fail not, and make due return of this writ, with your proceedings, in ninety days after the date hereof.

Witness Enoch P. Sloan, clerk of our said Circuit Court, and the

seal thereof, at Peoria, this 12th day of September, in the year of our Lord one thousand eight hundred and fifty

[SEAL.] ENOCH P. SLOAN, Clerk.

Came into my hands September 16th, 1857, at 3 o'clock, P. M.

A. MINOR, Sheriff.

(Endorsement by sheriff and return.)

By virtue of the appended writ of execution, I have this day levied on the following described real estate, goods and chattels, merchandise, &c., to wit: Thirty head of oxen, two two-horse-wagons, four ox-wagons, one gray stallion horse, one gray mare, two sorrel horses, one cream-colored horse, one black mare, about 100 bushels of malt, about 180 bushels of wheat, about 250 bushels of corn, 15 bushels of rye, 34 empty whiskey barrels, 1500 staves, one set coopers' tools, one set blacksmith tools, one iron safe, one clock, one cow, about 200 bushels stone-coal, about 100 sacks. The entire stock of merchandise, wares, &c., in the store-house occupied by Boutcum and Carrey in the town of Forneyville.

Also the following described real estate, to wit: A tract or parcel of land lying and situated on the waters of the Mackinaw River, in the county of Woodford and State of Illinois, being ten $\frac{50}{100}$ acres off the south end, and a tract of thirty and $\frac{1}{2}$ acres formerly owned by Joseph Majon, commencing at the southeast corner of said lot of ground at a stake on the south bank of said river; thence west variation 8° thirty-five $\frac{50}{100}$ct. poles to a stake 29 poles south of mill dam; thence north forty-seven $\frac{32}{100}$ poles to a stake, it being the S. W. corner of a five acre lot owned by James Finley; thence east with said Finley's south line 35 $\frac{50}{100}$ poles to a stake; thence south 47 $\frac{32}{100}$ poles to the beginning. Also the following described land in said county, commencing at the qr. sec. corner between sec. 16 and 17; thence W. 151 $\frac{50}{100}$ poles to the Mackinaw River; thence with said river 3 chains to a stake; thence south 66°, east 162 poles, being the southeast corner N. E. qr. of the S. E. qr. of said sec. 16, town. 25 N. R. 1 W.; thence north 80 poles to the beginning; —containing 40 acres, more or less; taken as the property of Charles Boutcum and Paul Carrey to satisfy said execution, which will be sold on the 15th day of December, A. D. 1857.

November 18th, 1857. A. MINOR, Sheriff.

The above described property, released from sale by virtue of a writ of injunction served on me by the coroner of Woodford County, which writ was issued from the Circuit Court of Peoria County, and dated December 12th, 1857. December 15th, 1857.

A. MINOR, Sheriff W. C.

I do further certify, that by order of said injunction, the whole of said personal property was returned to said defendants.

Dec. 15th, 1858. A. MINOR, Shff. W. C.

And afterwards, to wit, on the sixteenth day of November, A. D. 1858, the clerk of the Circuit Court of Peoria County issued a writ of venditioni exponas upon the said judgment rendered in said court on the 12th day of September, A. D. 1857, in favor of said Edward P. Tesson and Antoine L. Danjen, and against said Charles Boutcum and Paul Carrey, and directed the same to the sheriff of Woodford County, to execute which last named writ, together with the return and endorsement of said sheriff thereon, are in the words and figures following, to wit:—

(Writ of Vend. Exp.)

State of Illinois, Peoria County, *ss.*

The people of the State of Illinois to the sheriff of Woodford County, greeting.

Whereas, by our writ of fieri facias we lately commanded you, that of the goods and chattels, lands and tenements of Charles Boutcum and Paul Carrey in your county, you should cause to be made the sum of eight thousand dollars damages, and two dollars and eighty-five cents costs, which Edward P. Tesson and Antoine L. Danjen lately in the Circuit Court of Peoria County, on the 12th day of September, A. D. 1857, recovered against them, as by the record and proceedings of the said court in that behalf appears. And you having made return of that writ, that you had taken and levied on, by virtue thereof, the following described real estate, to wit, a tract or parcel of land lying and situated on the waters of the Mackinaw River, in the County of Woodford, and State of Illinois, being ten $\frac{50}{100}$ acres of the south end a tract of thirty and $\frac{1}{2}$ acres, formerly owned by Joseph Majon, commencing at the south E. corner of said lot of ground at a stake on the south bank of said river, thence west *variation* 8° thirty-five $\frac{50}{100}$ poles to a stake 29 poles south of mill-dam, thence north forty-seven $\frac{32}{100}$ poles to a stake, it being the S. W. corner of five acre lot owned by James Finley, thence east with said Finley's south line, $35\frac{50}{100}$ poles to a stake; thence south $47\frac{32}{100}$ poles to the beginning. Also the following described land in said county: commencing at the qr. sec. corner between sec. 16 and 17, thence W. $151\frac{50}{100}$ poles to the Mackinaw River, thence with said river three chains to a stake, thence south 66° east 162 poles, being the south E. corner N. E. qr. of the S. E. qr. of said sec. 16, town. 25, n. r. 1 W.; thence north 80 poles to the beginning, containing 40 acres more or less, as the property of the said Charles Boutcum and Paul Carrey, and that you were enjoined from selling said real estate by injunction of the Circuit Court of said Peoria County. And whereas, it has been suggested by N. H. Purple, attorney for the said plaintiffs, that since the rendition of the said judgment, that the said Antoine L. Danjen has departed this life, leaving the said Edward P. Tesson as survivor of the said Edward P. Tesson and Antoine L. Danjen.

We, therefore, command you, that you sell or cause to be sold, the real estate above described so levied upon by you as aforesaid, without delay, and that you have the money arising from such sale ready as soon as may be, to render to the said Edward P. Tesson, survivor as aforesaid, for his damages and costs, and make return of this writ, together with an endorsement thereon, of the manner in which you may execute the same, within ninety days from the date hereof.

Witness Enoch P. Sloan, clerk of our said court, and the seal thereof, at Peoria, this sixteenth day of November, A. D. 1858.

[SEAL.] ENOCH P. SLOAN, Clerk.

Sheriff's return upon the last above writ was filed Dec. 14th, 1858, and is as follows, to wit:—

(Shff's Return.)

By virtue of the within writ, I did, on the 8th day of December, A. D. 1858, at the court house in Metamora, between the hours of 10 and 6 o'clock of said day, sell at public auction the land and premises within described to Edward P. Tesson, for the sum of fifteen hundred dollars, he being the highest and best bidder, and that the highest and best price bidden for the same. Dec. 10, 1858.

A. MINOR, Shff. W. C.

Fees and costs on whole suit and executions, $85.00

State of Illinois, Peoria County, *ss.*

I, Enoch P. Sloan, Clerk of the Circuit Court within and for said county, do hereby certify, that the foregoing is a true and correct copy of an execution and sheriff's return thereon, and writ of venditioni exponas and sheriff's return thereon, forming a part of the record in the case of Edward P. Tesson and Antoine L. Danjen, plaintiffs, against Charles Boutcum and Paul Carrey, defendants, on confession of judgment in vacation, September 12th, A. D. 1857, as the same appears of record in my office.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at Peoria, this fifteenth day of December, A. D. 1858.

[SEAL.] ENOCH P. SLOAN, Clerk.
R. H.

(Bill of Complaint.)

To the honorable the Judges of the Circuit Court in and for the County of Peoria, in the State of Illinois, in Chancery sitting.

Complaining, show your orators, Charles Boutcum and Paul Carrey, of the County of Woodford, in said State, that your orators are now, and for a long time past have been, associated together as copartners, under the name of Boutcum & Carrey, in the business of manufacturing high wines and whiskey, in said county. That in order to carry on said business largely and profitably, large capital

and much ready money are required; and for the purpose of supplying this want, your orators, some time prior to the month of March, A. D. 1857, made arrangements with Edward P. Tesson and Antoine L. Danjen, who were then doing business as bankers in the city of St. Louis, in the State of Missouri, under the name and firm of Tesson & Danjen, to advance to your orators, from time to time, upon their drafts, such moneys as they might need for the purpose of carrying on their said business; that your orators and said Danjen are all natives of France, have been in this country but a few years, and are much more familiar with the French than with the English language. That said Tesson, although an American by birth, is what is usually denominated a creole of French extraction, and uses the French language as familiarly as the English language. That your orators being comparatively strangers in the country, were, therefore, naturally disposed to place confidence in said Tesson and Danjen, and did, in all their business transactions with them, confide implicitly in the integrity, good faith, and friendly feelings, which said Tesson and Danjen professed to entertain for your orators. That, as a consequence, as well as a proof of this confidence, on the part of your orators, they were accustomed to draw blank drafts on their commission merchants at St. Louis, Messrs. Angelrode & Bart, and send them to said Tesson and Danjen, to fill up, collect, and place the proceeds to the credit of your orators.

That on or about the twelfth day of March, A. D. 1857, said Tesson and Danjen having represented to your orators that your orators were indebted to them in the sum of five thousand five hundred dollars, for moneys advanced by them to your orators, including interest thereon, requested your orators to execute to them a promissory note and mortgage upon certain real estate owned by your orators to secure said indebtedness; that such a promissory note, with a deed of trust to one Peter B. Garesche, of said St. Louis, as trustee of said Tesson and Danjen, to secure payment of the same in sixty days after date, and conveying all of your orators' real and personal estate, including their distillery and everything in and about the same, were caused to be prepared by said Tesson and Danjen, in said St. Louis, and having been sent by them to said Woodford County for your orators to execute, your orators did, thereupon, without examination of the same, sign, seal, and deliver said deed of trust, and execute and deliver said promissory note to said Tesson and Danjen, having been assured by said Tesson and Danjen that the same were intended merely as security for said debt, and were not intended to coerce your orators to pay said indebtedness, and that they would give time to your orators to pay whatever indebtedness they might owe to them. That your orators had been dealing with said Tesson and Danjen about a year previous to the execution of said deed of trust, and have continued such dealing until some time in October last, when said Tesson and Danjen suspended business as bankers, and closed their doors. That during this period of

the business transactions of your orators with said Tesson and Danjen, they have drawn from and paid to said Tesson and Danjen large sums of money, amounting to more than fifty thousand dollars. That no regular settlement was ever made between your orators and said Tesson and Danjen during the whole period of their said business transactions. That at the time of the execution of said deed of trust your orators did not know, and did not think it necessary (so confidently did they rely on the good faith and friendship of said Tesson and Danjen) to examine the accounts between them to ascertain the actual amount of their indebtedness, but executed and delivered said note and deed of trust under the confident assurance that said Tesson and Danjen would make the same right, and would indulge your orators and treat them as fairly as they had theretofore done.

Your orators here refer to said deed of trust, a certified copy of which is herewith given as part of the bill marked "A," as an illustration at once of the confidence of your orators in said Tesson and Danjen, and of the bad faith with which this confidence was met by the latter.

Your orators having just been informed by their counsel that said deed authorizes the said Tesson and Danjen, through the said trustee, to sell the real estate and other property therein conveyed at public sale, without any notice whatever that could be accessible or available to your orators. That the real estate alone, with the distillery thereon erected described in said deed of trust, cost your orators and are now worth more than forty-five thousand dollars, and that the personal property therein conveyed is worth between four thousand and five thousand dollars.

Your orators further show, that on or about the twelfth day of September last, said Tesson and Danjen requested your orators to give them security for above two thousand five hundred dollars, in addition to the sum already secured as above said, to which your orators, having the same confidence in said Tesson and Danjen as before, assented, and, therefore, without reading or causing to be read, the instrument hereinafter mentioned, your orators immediately, at the request of the agent of said Tesson and Danjen, signed a paper writing prepared by the attorneys of said Tesson and Danjen, a copy of which marked "B," is herewith filed and made part of this bill. That at the time of signing said paper writing, your orators did not know what it was, nor were they informed of its nature by said Tesson and Danjen, or their attorneys, or their agent, except that it was a security for about the sum of eight thousand dollars, and that it was to be substituted for said deed of trust, which your orators supposed was thereby cancelled. That your orators supposed that said paper writing last executed was nothing more than a mortgage; that it was intended merely to secure whatever indebtedness there might be on final settlement on part of your orators to said Tesson and Danjen, and that the same could not be

foreclosed without a decree of court; and that had your orators known the real character of said instruments, they would not have signed either of them.

Your orators further show that the form and character of said last mentioned instrument as well as said deed of trust show, as they believe, as well the degree of confidence they reposed in said Tesson and Danjen, as the bad faith with which said Tesson and Danjen have intended to reciprocate or requite this confidence. That your orators did not understand nor were they informed of the character of said last mentioned instrument, until so informed by their counsel in this cause at the time of preparing this bill, on or about the 28th instant; that they are informed and believe that said last mentioned instrument contains provisions of extraordinary stringency, which in times like the present, if allowed to be enforced would necessarily cause a ruinous sacrifice of all your orators' valuable property to satisfy said indebtedness, or perhaps only part of it, and thereby leave your orators utterly ruined and still indebted to said Tesson and Danjen.

Your orators further show that after the execution of said last mentioned instrument they were suffered to continue in pursuit of their business in fancied security, without any intimation on the part of said Tesson and Danjen of their ulterior designs until on or about the 23d day of November instant, when an agent of said Tesson and Danjen visited your orators' distillery in company with the sheriff of said Woodford County, and the said sheriff thereupon, under the instructions of said agent, immediately proceeded to levy upon and seize all the personal property of your orators, consisting of stock, cattle, horses, &c., of the value of several thousand dollars, and also levied upon all your orators' real estate and distillery, as described in said deed of trust (all of said property belonging to your orators), under and by virtue of an execution purporting to have been issued upon the judgment rendered against your orators, in accordance with said power of attorney so fraudulently obtained from your orators, said judgment having been entered in vacation in the office of the clerk of the Circuit Court of Peoria County, on or about the twelfth day of September, A. D. 1857, as by the copy thereof herewith filed marked "C," will appear.

And your orators further show that they were ignorant that such judgment had been rendered until so informed by their counsel a few days since; that since the execution of said power of attorney until about the 21st instant, the intercourse between your orators and said Tesson and Danjen was of the same friendly character as before that time, not the slightest intimation having beeen given until said date that said Tesson and Danjen intended to put into active operation the powerful instrument of oppression, which they had so fraudulently procured from the unsuspecting confidence of your orators. That about two weeks ago one of your orators visited St. Louis in company with an agent of said Tesson and Danjen, one Lamar E.

Suber, and while there negotiating without suspicion with said Tesson for a further extension of said indebtedness, said Suber, by the contrivance of said Tesson, suddenly returned to said Woodford County without the knowledge of your orator, who was then at St. Louis, and immediately procured said sheriff to make the levy above said, said Suber there representing fraudulently and falsely to your said orator's copartners who had remained at home, that said levy was made with the knowledge and consent of your said orator then at said St. Louis.

Your orators further show that said deed of trust and said power of attorney to confess said judgment, and said judgment were and each of them was obtained and procured from your orators by fraud, misrepresentation and artifice on the part of said Tesson and Danjen or of said Tesson; that your orators were entrapped and inveigled by the fraudulently simulated friendship of said Tesson and his agents into the execution of said instruments respectively without examining them, and without consulting counsel or other person better acquainted than themselves with the nature and effect of said instruments. That your orators were then and are now wholly ignorant of the laws of this county relating to said instruments so executed by them, and of the nature and effect of said instruments, except as now advised by counsel, and at the time of the execution thereof wholly relied upon the good faith and supposed friendship of said Tesson and Danjen.

And your orators further show that the said sheriff of said Woodford County had advertised all of said property, real and personal, for sale on or about the fifteenth of December, A. D. 1857, and threatens to sell the same at that time, in satisfaction of said judgment, by virtue of said execution, absolutely and without right of redemption of said real estate by your orators, pursuant to the laws regulating sales by sheriffs under execution, said Tesson and Danjen and said sheriff alleging and pretending that your orators in and by the said power of attorney, by virtue of which said judgment purports to have been entered, have expressly waived and relinquished all right to redeem said real estate: your orators herewith file a copy of said levy and said sheriff's advertisement of sale as part of this bill, marked "D."

Whereas your orators show that at the time of the execution of said power of attorney and the confession of said judgment, and until the drawing of this bill, they were wholly ignorant that said power of attorney contained any such provision; and your orators further show that as they are informed and believed, said sheriff, whose name is Abia Minor, will proceed to sell all of said real estate as well as said personal property, absolutely, under and by virtue of said execution, unless restrained by injunction issuing from this court; that said property is, as they are informed and believe, of the value above stated. That said distillery has been, until recently, in active operation, is quite new, and in excellent condition for manufacturing,

but that as your orators are advised and believe, the whole of said property if exposed at public sale for cash, as threatened by said Tesson and Danjen and said sheriff, would scarcely sell for enough money to pay said payment and execution, in consequence of the unusual scarcity of money at this time; and your orators charge that the said Tesson and Danjen intend to use said judgments and execution as instruments to obtain and procure all of said property for themselves, as purchasers under said execution, and thereby, under cover of the law, wrest the same from your orators for less than one-fifth of its actual value.

And your orators further show that said Tesson and Danjen have not released or discharged said deed of trust, but that the same is still apparently in full force against your orators' said real estate, which is at any moment liable to be sold by virtue of the fraudulent provisions therein contained, after ten days' advertisement in any obscure, or merely ephemeral newspaper of said city of Saint Louis, and therefore without notice to your orators, as they are advised and believe, said deed of trust being of record in said county of Woodford; that as they are advised and believe, said deed of trust was a fraud upon your orators in its inception, and at the time of the execution of said power of attorney, was virtually satisfied by said new security given by your orators, and ought to have been released by said Tesson and Danjen.

And your orators further show that no new consideration whatever was given or promised by said Tesson and Danjen to your orators at the time of the execution of said power of attorney, but that the same was so fraudulently procured, as abovesaid, from the unsuspecting confidence and ignorance of your orators, to secure an indebtedness already supposed to be due from your orators to said Danjen and Tesson, and which was contracted by your orators in the part of entire confidence induced by the friendly professions of said Tesson and Danjen, that they would extend to your orators, in the collection of whatever balance might be found due them on final settlement, at least equal indulgence with that extended by the laws of the State to every citizen.

And your orators further show that they are informed and believe that the said Abia Minor, sheriff, as aforesaid, has combined and confederated with said Tesson and Danjen to ruin your orators, by forcing them to pay the whole of said alleged indebtedness to said Tesson and Danjen immediately, or to suffer all of said property to be sold without redemption at public sale, to the highest bidder for cash. That they are informed and believe that said Minor has admitted that if he could have said alleged indebtedness arranged to the satisfaction of said Tesson and Danjen, that he, said Minor, would receive or make one thousand dollars. They therefore charge that said Tesson and Danjen, or said Tesson, has conspired with said Minor, Lamar E. Suber, and Peter B. Garesche, and others, to your orators unknown, to wrest said property from your

orators by means of said fraudulent judgment and execution, for a trifling consideration. That the said real estate is ample security for more than double the amount of said indebtedness, and that the distillery thereon erected, is insured for the sum of eight thousand dollars, and that if your orators are permitted to go on with their distillery, they can pay within the period of redemption allowed by law upon sales under execution, the whole of the indebtedness to said Tesson and Danjen.

That as your orators are advised by counsel, and believe, neither said deed of trust nor said power of attorney are in law or equity, the act or deed of your orators; that neither of said instruments express the intention or agreement of your orators; that both of these instruments were obtained by the fraud and misrepresentation and artifice of said Tesson and Danjen, from the ignorance and unsuspecting confidence of your orators, and therefore void.

Your orators therefore pray that said Edward P. Tesson and Antoine L. Danjen, and Abia Minor, Peter B. Garesche, Lamar E. Suber, be summoned to answer all the matters herein alleged upon their respective oaths. That upon the hearing hereof, an account be taken between your orators and said Tesson and Danjen, and that your orators be permitted to discharge and satisfy said judgment and deed of trust, by paying to said Tesson and Danjen such sum as shall be found justly due to them. That said deed of trust be decreed to be absolutely cancelled and delivered up to your orators. That said power of attorney and said judgment be annulled and vacated, or so modified and corrected as to conform to the law in this case provided, by expunging therefrom said waiver or relinquishment of the right of redemption or other rights guaranteed by law.

And for such other and further relief in the premises, as equity and good conscience may require; and that in the meantime said Tesson and Danjen, and said Suber, and said Abia Minor, sheriff, as aforesaid, their, or either of their agents, servants or attorneys, deputy or deputies, successor or successors, be absolutely enjoined and restrained by injunction from this court, from selling or offering to sell any part of said property so levied upon, by virtue of said execution or said levy, or from any further proceeding to enforce said execution or said levy, or from further proceedings with the levy made under said execution, or from any further or other proceeding to collect said judgment, or any part thereof, in any manner whatever by any other execution or otherwise, or from any interference whatever with any part of the property so levied on, and that said Tesson and Danjen, Suber and Garesche, or either of them, their or either of their agents, attorneys, or assigns, or grantee or grantees, or other persons claiming through them, or either of them, be also restrained and enjoined from proceeding to sell or execute any conveyance of said real estate, or any part thereof, under and by virtue of said deed of trust, or from taking any steps to enforce the per-

formance of said trust or any part thereof, until this court make further order herein, and they will ever pray, &c.

(Signed) PAUL CARREY.
(Signed) CHARLES BOUTCUM.

State of Illinois, Peoria County, ss.

Paul Carrey and Charles Boutcum, having been duly sworn, say, that the matters set forth in the foregoing bill, as upon information and belief they believe to be true, and those stated as of their knowledge, are true in substance and fact.

Subscribed and sworn to before me this 1st day of December, A. D. 1857.

[SEAL.] BERNARD BAILY, Notary Public.

Let an injunction issue, according to the prayer of the bill, upon the complainants' entering into bond in the penal sum of sixteen thousand dollars with Christian Farris and Peter Farris, conditioned according to law. (Signed) E. N. POWELL.

December 12, '57.

Circuit Court, Peoria County. March Term, A. D. 1858.

CHARLES BOUTCUM, PAUL CARREY,
vs.
EDWARD P. TESSON, ANTOINE L. DANJEN, LAMAR E. SUBER, ABIA MINOR, PETER B. GARESCHE.

Bill to correct and vacate judgment, and decree, and other purposes.

The clerk will please issue summons, as above, to Peoria County, except for Minor, who is sheriff of Woodford County; issue summons for him to coroner of Woodford.

(Signed) BRYAN and STONE, for Compl'ts.

E. B. STONE, Esq., C. W. R.

Endorsed on back: Filed December 12th, 1857.

(Signed) ENOCH P. SLOAN, Clerk.

(Summons.)

The people, State of Illinois, to the Sheriff of Peoria County, greeting:

We command you to summon Edward P. Tesson, Antoine L. Danjen, Lamar E. Suber, Peter B. Garesche (impleaded with Abia Minor), if they may be found in your county, to appear before our Circuit Court on the first day of the term thereof, to be held at Peoria, within and for the said county of Peoria, on the first Monday of March next, then and there in our said court to answer the matters and things contained in a certain bill in equity exhibited against them in our said court, on the chancery side thereof, by Charles Boutcum and Paul Carrey, and make return of this writ with an

endorsement of the time and manner of serving the same on or before the first day of the term of the said court to be held as aforesaid.

Witness Enoch P. Sloan, clerk of our said court, and the seal thereof, at Peoria, this twelfth day of December, in the year of our Lord one thousand eight hundred and fifty-seven.

[SEAL.] ENOCH P. SLOAN, Clerk.

Endorsed, on back, as follows: Boutcum et al. *vs.* Tesson et al. Summons in chancery. The within-named parties is not found in my county. February 19th, 1858. F. W. SMITH, Sheriff.

BRYAN and STONE, for Compl'ts.

4 copies, $1 00
Ret. . . 10

$1 10

(Injunction.)

State of Illinois, Peoria County, *ss.*

The people of the State of Illinois, to Edward P. Tesson, Antoine L. Danjen, Peter B. Garesche, Lamar E. Suber, and Abia Minor, sheriff of the county of Woodford, State of Illinois, greeting:

Whereas Charles Boutcum and Paul Carrey, complainants, have this day filed their bill in equity in the Circuit Court of said county, on the chancery side thereof, against you, the said Edward P. Tesson, Antoine L. Danjen, Peter B. Garische, Lamar E. Suber, and Abia Minor, sheriff of Woodford County, Illinois, defendants, wherein, among other things, it is alleged that you, the said Tesson, Danjen, and Suber, have wrongfully and fraudulently caused to be entered in our said Circuit Court a judgment against said Boutcum and Carrey for the sum of eight thousand dollars damages and costs; and that you, the said Danjen, Tesson, Suber, and Minor, under and by virtue of an execution issued from our said court upon said judgment, have levied upon the following real and personal estate, the property of said Boutcum and Carrey, to wit: A tract or parcel of land lying and situated on the waters of the Mackinaw River, in the county of Woodford and State of Illinois, being ten and one-half acres, more or less, off the south end of a tract of land, containing thirty-one and one-half acres, formerly owned by Joseph Majors, commencing at the southeast corner of said lot of ground, at a stake on the south bank of said river; thence west, varying 80° 35½ poles to a stake, 29 poles south of mill dam; thence north forty-seven $\frac{32}{100}$ poles to a stake, it being the S. W. corner of a five acre lot owned by James Finley; thence east of said Finley's south line 35 one-half poles to a stake; thence south forty-seven $\frac{32}{100}$ poles to the beginning. Also the following described land in said county, commencing at the qr. section corner, between sections 16 and 17; thence west 151 one-half poles to the Mackinaw River; thence, by said river, 3 chains to a stake; thence south 66°, east 162 poles, being the S. E. corner N. E. qr. of the S. E. qr. of said section 16,

town. 25, north range 1 W.; thence north 80 poles to the beginning —containing 40 acres, more or less. Also the following goods and chattels, merchandise, to wit: Thirty head of oxen, two two-horse-wagons, four ox-wagons, one gray stallion horse, one gray mare, two sorrel horses, one cream-colored horse, one black mare, about one hundred bushels malt, about 180 bushels wheat, about 250 bushels corn, 15 bushels rye, 34 empty whisky barrels, 1500 staves, one set cooper tools, one set blacksmith tools, one iron safe, one clock, one cow, about 200 bushels stone coal, about 100 sacks, the entire stock of merchandise wares, &c., in the store-house occupied by Boutcum and Carrey in the town of Fornyville; taken as the property of Charles Boutcum and Paul Carrey to satisfy said execution; that you, the said Tesson, Danjen, and Suber, have caused the same to be advertised by said Minor, as said sheriff, to be sold at public sale by virtue of said levy on the 15th day of December instant; and that you, the said sheriff, threaten to sell the same absolutely to the highest bidder for cash at that time, without the privilege of redemption of said real estate, as provided by law; and that you, the said Tesson, Danjen, Suber, Garische, also threaten, wrongfully and fraudulently, to sell said real and personal estate under and by virtue of a deed of trust fraudulently procured from said Boutcum and Carrey.

Now, therefore, we do hereby absolutely command and enjoin you, the said Edward P. Tesson, Antoine L. Danjen, Lamar E. Suber, Peter B. Garesche, Abia Minor, sheriff as aforesaid, you or either of your agents, servants, attorneys, deputy or deputies, successor or successors, that you and do desist and refrain from selling or offering to sell any part said property so levied upon by virtue of said execution or said levy, or from any further proceedings to enforce said execution or said levy, or from further proceeding with the levy under said execution, or from any further or other proceedings to collect said judgment or any part thereof in any manner whatever, by any other execution or otherwise, or from any interference with any part of the property so levied on, and that you, the said Tesson, Danjen, Suber and Garesche, or either of you, your, or either of your agents, attorneys, or assignee, or grantee or grantees, or other person claiming through you or either of you, do absolutely desist and refrain from proceding to sell or execute any conveyance of said property or any part thereof, under and by virtue of said deed of trust, or from taking any steps to enforce the performance of said trust or any part thereof, until you and each of you shall appear to and fully answer the said complainants' bill, and the court make other order to the contrary; hereof fail not under the penalty of what the law directs.

Witness Enoch P. Sloan, Clerk of our said court, and the seal thereof at Peoria, this twelfth day of December, A. D. 1857.

[SEAL.] ENOCH P. SLOAN, Clerk. R. H.

To the Coroner of Woodford County, Illinois, to execute.

Endorsed on back:

BOUTCUM et al. vs. TESSON et al. } Injunction.

Duly served on the within defendant, Abia Minor, by reading and copy.

Summons,	50
Copy,	50
Mileage, &c.	80
Return,	10
	$1 90

Fees paid by Boutcum and Carrey December 15th, 1857.

B. W. KINDIG, Coroner of Woodford County, Ill.

BRYAN and STONE.

(Injunction Bond.)

Know all men by these presents that we, Charles Boutcum, Paul Carrey, Christian Farris and Peter Farris, are held and firmly bound unto Edward P. Tesson, Antoine L. Danjen, Lamar E. Suber, Peter B. Garesche, and Abiah Minor, in the penal sum of seventeen thousand dollars, for the payment of which we hereby bind ourselves and our personal representatives respectively. Witness our hands and seals, this twelfth day of December, A. D. 1857.

The condition of this obligation is such that whereas the said Boutcum and Carrey have on the day of the date hereof sued out and obtained from the Circuit Court of Peoria County, in the State of Illinois, upon a bill in equity exhibited in said court by said Boutcum and Carrey, as complainants, against Edward P. Tesson, Antoine L. Danjen, Lamar E. Suber, Peter B. Garesche, and Abia Minor, as defendants, a writ of injunction under the seal of said court, enjoining and restraining said defendants from doing certain acts in said writ mentioned, and especially enjoining and restraining said defendants, or either of them, from the collection of a certain judgment and execution therein mentioned, for the sum of eight thousand dollars, damages and costs of suit, which judgment said Tesson and Danjen recovered against said Boutcum and Carrey in a certain action at law in said Circuit Court, on the twelfth day of September, A. D. 1857, until said Circuit Court shall make further order in the premises. Now, if the said Boutcum and Carrey shall pay all money and costs due or to be due to said Tesson and Danjen, plaintiffs in said action at law, and also all such costs and damages as shall be awarded against the complainants in said bill in equity in case said injunction shall be dissolved, then this bond shall be void, otherwise in force.

CHARLES BOUTCUM. [SEAL.]
PAUL CARREY, [SEAL.]
By Charles Boutcum, his attorney in fact. [SEAL.]
CHRISTIAN FARRIS. [SEAL.]
PETER FARRIS. [SEAL.]

Proceedings in chancery before the Circuit Court, at a term thereof began and held at the court-house in the city of Peoria, in and for the county of Peoria, State of Illinois, on the third Monday in the month of November, in the year of our Lord one thousand eight hundred and fifty-seven, it being the sixteenth day of said month. Present, the Honorable Elihu N. Powell, Judge of the 10th Judicial Circuit of the State of Illinois, Francis W. Smith, Sheriff, and Enoch P. Sloan, Clerk, to wit:—

Thursday, December 17th, A. D. 1857.

CHARLES BOUTCUM, PAUL CARREY,

vs.

EDWARD P. TESSON, ANTOINE L. DANJEN, LAMAR E. SUBER, ABIA MINOR, PETER B. GARISCHI.

This day comes the defendants by N. H. Purple, their solicitor, and enters their motion to dissolve the injunction allowed in this cause.

Monday, December 28th, A. D. 1857.

CHARLES BOUTCUM, PAUL CARREY,

vs.

EDWARD P. TESSON, ANTOINE L. DANJEN, LAMAR E. SUBER, ABIA MINOR, PETER B. GARISCHE.

For injunction.

This day come the defendants, by N. H. Purple, their solicitor, and the complainants by Bryan, their solicitor; and the defendants moved the court to take up their motion to dissolve the injunction herein, which motion was resisted by complainants, and the court having heard the argument of the solicitors, does order that said motion be overruled; whereupon the defendants, by their solicitor, give notice that they will apply for a change of venue in this cause.

(Petition for change of venue.)

In the Circuit Court of Peoria County.

CHARLES BOUTCUM, PAUL CARREY,

vs.

EDWARD P. TESSON, ANTOINE L. DANJEN, ABIA MINOR, PETER B. GARISCHE, and LAMAR E. SUBER.

In Chancery.

The petition of defendants, Edward P. Tesson, Antoine L. Danjen, Abia Minor, Peter B. Garische, and Lamar E. Suber, represents that the Judge of the Circuit Court of Peoria County are prejudiced against the said petitioners, defendants in the above cause, so that they fear that they will not receive a fair trial in the court in which the said action is pending, and they, the said defendants, therefore

pray a change of venue in this cause to some county where the cause aforesaid complained of does not exist.

EDWARD P. TESSON,
ANTOINE L. DANJEN,
ABIA MINOR,
PETER B. GARISCHE,
LAMAR E. SUBER.
By PURPLE and PRATT, their Attorneys.

State of Illinois, Peoria County, *ss.*

Lamar E. Suber being sworn, says, that the foregoing petition and the statements therein contained, are true to the best of his knowledge, information, and belief.

L. E. SUBER.

Sworn to before me, this 29th day of January, A. D. 1858.

N. H. PURPLE,
Notary Public, Peoria City, Ill.

"Endorsed on back:" Charles Boutcum, Paul Carrey, *vs.* Edward P. Tesson and others. Petition for change of venue. Filed Jan. 30, 1858.

ENOCH P. SLOAN, Clerk.

(Order for change of venue.)

CHARLES BOUTCUM, PAUL CARREY,
vs.
EDWARD P. TESSON, ANTOINE L. DANJEN, ABIA MINOR, PETER B. GARISCHE, LAMAR E. SUBER.

In Chancery for Injunction.

This day, in vacation, come the said defendants, by Purple and Pratt, their solicitors, and present the petition of the said defendants for a change of venue, on account that the judge of this court is prejudiced against said defendants, so that they fear that they will not receive a fair trial in the court in which the said action is pending, and it appearing that reasonable notice hath been given to the counsel for complainants of the intended application:

It is therefore ordered that the venue in said cause be changed to the county of Woodford, and that the clerk file this order in the case and make out a copy thereof, and a full transcript of the record and proceedings in said cause, and certify and transmit the same to the Circuit Court of Woodford County, together with all papers filed in the cause and appertaining or forming part of the record.

Peoria, January 30th, 1858.

E. N. POWELL,
Judge of 16th Circuit.

"Endorsed on back:" Order change of venue. Filed January 30th, 1858.

ENOCH P. SLOAN, Cl'k.

(Answer of Suber.)

In the Circuit Court of Peoria County.

CHARLES BOUTCUM and PAUL CARREY
vs.
EDWARD P. TESSON, ANTOINE L. DANJEN, ABIAH MINOR, PETER B. GARESCHE, LAMAR E. SUBER. } In Chancery.

The separate answer of Lamar E. Suber, one of the defendants above named, to the complainants' bill of complaint, filed in this cause.

Said defendant answering says: He admits the complainants were engaged in the distilling and manufacturing high wines and whiskey, and that it required a large capital and ready means, as stated in the complainants' bill, and that they did make arrangements with defendants, Tesson and Danjen, to advance money on their drafts, to carry on the business.

He admits that complainants are natives of France; denies that Danjen is, and says that he was born in the city of St. Louis.

He admits that Danjen and Tesson both speak and understand the French language, as well as English; he admits they sometimes drew blank drafts on Angelrodt and Barth, the object of which was to renew former drafts, and were always filled up with the amounts thus due to Tesson and Danjen on former drafts.

About the 12th day of March, A. D. 1857, defendant Danjen did tell the complainants that there was due to him and Tesson $5500, which was in fact true, and this defendant at the same time showed to complainant Carrey the books and account of Tesson and Danjen, and he admitted said account was correct. Mr. Danjen said he wanted some security, and complainants proposed to give a deed of trust upon their property in Woodford County. The deed of trust was prepared in St. Louis, and sent in a letter either to the complainants, or by their clerk, Edward Monard, to them in Woodford County; and the same was executed by them, and returned to Tesson and Danjen in some manner; by what conveyance he is not positive. This is the same mortgage or deed of trust referred to in complainants' bill, and this defendant supposes the same is correctly stated, so far as the contents are concerned, in the copy filed with their said bill.

Whether the said complainants read or examined said mortgage, he has no knowledge, information or belief, except that, inasmuch as the said complainants had full and ample opportunity to read and examine the same, he has no doubt they did do so, and well knew its contents. Whether the defendant Tesson told complainants that it was all right, he has no knowledge, information or belief. But he states, in truth and in fact it was all right, and the whole amount was justly due from complainants to the said Tesson and Danjen.

And this defendant, further answering, says, that to the best of

his knowledge, information and belief, said Tesson and Danjen, nor either of them, did not tell complainants, that said deed of trust was intended only as security for the debt, and not to coerce complainants to pay the same, or that they would give time to pay, or anything to that effect.

Defendants were present at most of the conversations relative to said deed of trust, and never heard any such conversation, and believes that none such took place.

He admits that complainants had been dealing with Tesson and Danjen for about a year, and until about the 1st of August, 1857, at which time said defendants refused to advance any more to them, unless upon accepted drafts on Angelrodt and Barth.

He admits the business transactions may have amounted to fifty thousand dollars.

The defendant admits, that at the time the deed of trust was given there was no regular settlement made, but he states that the account was shown to the complainant, Carrey, as before stated, and he admitted the correctness of the same; and he denies, that to the best of his knowledge, information, and belief, the said Tesson and Danjen said they would make all right, and would indulge complainants.

And this defendant, further answering, says, that in fact the said Tesson and Danjen did indulge complainants, by extending the payment from time to time after said deed of trust became due—until after the execution of the power of attorney, referred to in complainants' bill of the 12th September, 1857, and until the said defendants attempted fraudulently to deprive the defendants Tesson and Danjen of their prior lien, by turning out the personal property secured by said deed of trust, upon other execution or executions in favor of other creditors; and the said defendants did not cause their execution to be levied upon either real or personal property, until other execution or executions had been issued against them, and they had voluntarily turned out said personal property on the same.

He denies that the real estate of complainants, including their distillery, is worth $45,000, and avers that, in his opinion, the same is not worth more than $20,000.

Defendant, further answering, denies, that about the 12th September, 1857, Tesson and Danjen demanded security for $5500 more; but admits that, through this defendant, they did request the said complainants to give a power of attorney to confess a judgment for the sum of $8000, which was a small sum, less than the amount then due from the complainants not otherwise secured, there being a further large sum then due, exceeding the sum of seven thousand to said Tesson and Danjen from complainants, which was secured by the acceptance of Angelrodt and Barth, at least five thousand dollars of which last-named sum is still due and unpaid.

Defendant, further answering, states, that complainants did execute the power of attorney filed with complainants' bill. The state-

ment in said bill, that the same was not read to them, is wholly untrue. That, in fact and in truth, he read and fully explained the same to the said complainants at the time they signed and executed the same in the presence of Abraham H. Purple and Lorin G. Pratt, and they both fully understood the same and knew the contents thereof, and they could not have supposed that it was anything else than what on its face it purported to be.

He denies that complainants did not know the character of the power of attorney, until informed by counsel, as stated in complainants' bill.

He cannot state whether or not it would ruin the complainants if sale should be made on said execution ; neither, as he understands it, is this a question for the consideration of this court.

Defendant admits that complainants continued business, until the levy was made by the sheriff as stated in complainants' bill, and that the property levied on was worth several thousand dollars. Defendant supposes the copy of levy, &c., marked "C," and filed with complaints' bill, to be correct.

The statement of complainants, that they did not know that a judgment had been entered up, until a few days since, when he was informed by his counsel, is wholly untrue.

They did know of said judgment, and often talked with this defendant, and with defendant Tesson, and with Purple and Pratt, attorneys for Tesson and Danjen, upon the subject of said judgment and execution; and, on the 4th day of November, A. D. 1857, said complainants wrote the letter hereto attached, marked "A," and made part of this answer, in which they admit their knowledge of the existence both of the judgment and execution.

Defendant admits that friendly relations did exist between the parties up to and after the 21st of November, and until the time that the defendants attempted to term out the personal property upon other executions, and boasted that they had pulled the wool over the eyes of this defendant.

He denies that, so far as he is advised, said defendants never intended to put into operation any instrument of oppression, fraudulently or otherwise procured.

Defendant admits that, about four weeks since, he went to St. Louis with Boutcum, one of the complainants; and while these defendants did leave and come to Peoria and Woodford County, for the purpose of securing the debt, and went with the sheriff to make the levy upon the property, he did this at the request of the sheriff and of the complainant Carrey, both of whom had previously asked him to be present when the levy was made. The matter of his leaving was no secret, and he has no doubt, the said Boutcum knew it, as he informed the friends of said Boutcum of his intention to leave.

Defendant, further answering, says, he never made any false or fraudulent representation about said levy to any person, or at any time or place.

And this defendant, further answering, says, that the said power of attorney was not procured by fraud, misrepresentation, or artifice, and that the complainants were not entrapped, or in any manner inveigled by defendants, or any of them, into the execution of said power of attorney.

Whether the complainants are ignorant of the law as stated by them, he does not know; he has been informed that one of the complainants was a lawyer in France, and therefore supposes he ought to know something of the general principles of law and of the obligations of contracts. But he understands by his counsel that, if they are so ignorant, it is no excuse.

Defendant admits that the said sheriff had advertised the said property for sale, and intended to have sold the same subject to said advertisement, and according to law, but not otherwise, and we presume the copy of the levy and advertisement attached to complainants' bill, marked "D," is correct.

Complainants did know, as hereinbefore stated, all the provisions of the power of attorney at the time they signed the same.

Defendant admits, said distillery had, till recently, been in operation, and that the works were nearly new and reasonably good.

He is unable to state for what price said property would sell on execution; money, he admits, is scarce, which is one reason why defendants, Tesson and Danjen, being in great need, want theirs.

He denies that defendants, Tesson and Danjen, intend to use said judgment and execution for any purpose except the collection of their debt by due course of law.

He admits that Tesson and Danjen have not released their deed of trust, and that the same is in full force and of record in Woodford County.

He denies that it was fraudulently or virtually cancelled by the execution of the power of attorney aforesaid. But this defendant did agree that so soon as the $8,000 judgment was paid he would cancel said deed of trust, and the said defendants are still ready and willing to do so.

This defendant further answering, admits that except the indebtedness of $8,000 aforesaid there was no real consideration given for said power of attorney, but denies that, so far as he is advised and believes, said Tesson and Danjen ever said anything to the complainants about giving indulgence, as charged in said bill.

And this defendant further answering says, that he knows of no combination on the part of Minor the sheriff, with any person to ruin or injure the complainants, and believes that in all respects he has only intended to do his duty as an officer honestly and impartially.

He knows nothing of any admissions made by said Minor, as charged in said bill.

He states, however, that he did tell the said sheriff that Tesson and Danjen were so much in need of money that if any person could

be found to purchase the property for cash, or would buy the judgment, they, said Tesson and Danjen, would take $7,000 for the $8,000 judgment.

And he also about the same time, offered the said judgment to the said Boutcum, one of the complainants, for the sum of $6,500 cash.

This defendant further answering, denies that said real estate and distillery is, in his opinion, security for double the sum of $8,000; said distillery and fixtures constitute the principal value of the property, which may at any time be destroyed by fire—such property is, as he believes, considered extra hazardous, and as to the insurance of $8,000, if any such exists, the same would be of no use or benefit to the said defendants Tesson and Danjen, so far as this defendant is advised and believes, except to the amount of $3,000 taken for their benefit.

And this defendant further answering says, that the said deed of trust and power of attorney were each of them signed and executed by the complainants as their acts and deeds, and were, as he is advised by counsel, both in law and equity, the acts and deeds of the said complainants, and neither of them were in any manner procured by fraud or misrepresentations or artifice of said defendants or any other person.

And this defendant further answering says, that he is now and for the last three years has been the confidential clerk, agent, and attorney in fact of the said defendants Tesson and Danjen, and that he is intimately acquainted with their business, and has power and authority to collect, settle, adjust or compromise any claim of theirs against persons generally, and has now and always has had power and authority to adjust, settle or compromise the claim against the complainants—and that the business of taking the said power of attorney from the complainants was transacted solely by him and under his advice, and the advice of counsel given to him.

That neither the said Tesson nor Danjen knew anything about the said power of attorney until after the same had been executed by the complainants, and consequently could not have entered into any fraudulent combination to procure the same.

And this defendant further answering saith, that since the said complainants made oath to this said bill, they have often admitted that said debt of $8,000 was just, and have proposed to pay the sum, and have offered to give security for the payment thereof, and to procure Christian Forney to sign notes in security for the same, which this defendant declined to accept, unless they were judgment notes containing a power of attorney with the stipulations contained in the said power of attorney, upon which said judgment was entered—and defendants offered to give complainants time of 4, 6, 8, 10, 12, 14, 16, and 18 months' time in which to make the payment of the said judgment, which the Forney, as he is advised and believes, was willing to do, and was prevented from so doing by the complainants or one of them.

And this defendant, further answering, denies all the fraud, combinations and conspiracy charged in said complainants' bill, and states further that all the charges and allegations therein contained, not herein expressly traversed or denied, are untrue, and he calls for the pooof of the same.

And having fully answered, he prays to be dismissed with his costs, &c. LAMAR E. SUBER.

PURPLE and PRATT, Def'ts Solicitors.

State of Illinois, Peoria County, *ss.*

Lamar E. Suber being sworn, says, that the foregoing answer in chancery by him subscribed, is true in substance and in fact to the best of his knowledge, information, and belief.

Sworn to before me, this 17th December, A. D. 1857.

N. H. PURPLE, Notary Public, Peoria City, Ill.

State of Illinois, Woodford County, *ss.*

I, Peter Doty, Clerk of the Circuit Court of Woodford County, do hereby certify that the foregoing is a true copy of the separate answer of Lamar E. Suber, one of the defendants, as remaining on file in my office in the foregoing entitled case.

Witness my hand and the seal of the Circuit Court of said county, this 25th day of February, A. D. 1859.

[SEAL.] PETER DOTY, Clerk.

(Answer of Tesson.)

In the Circuit Court of Peoria County. In Chancery.

CHARLES BOUTCUM and PAUL CARREY, Complainants,

vs.

EDWARD P. TESSON, ANTOINE L. DANJEN, ABIA MINOR, PETER R. GARESCHE, and LAMAR E. SUBER, Defendants.

The separate answer of Edward P. Tesson, one of the above named defendants, to the complainants' bill of complaint filed in this cause.

Said defendant answering says, that he admits that the above named complainants are and have been associated together in business, in Woodford County, as stated in the complaint of said complainants, and that large capital and much ready means were required to carry on said business profitably. Said defendant further admits that on the 12th of March, 1857, himself and Antoine L. Danjen were doing business as brokers in the city of St. Louis, and that several times prior to the last mentioned date the complainants made arrangements with said Tesson & Danjen to advance money upon the draft of complainants, and said defendant says that the first arrangement of the kind described in complaint was made by said complainants with said Tesson and Danjen on or about November, A. D. 1856.

He admits that said complainants are natives of France, but this defendant most positively denies that said Danjen is a native of

France, and says that said Danjen is a native of the city of St. Louis, in the State of Missouri.

He states that said complainants, and both of them, have resided in this country for many years, and denies that they or either of them are strangers in this country, in such a sense as would entitle them to any special sympathy or indulgence; he states that said Carrey as far back as 1850 or thereabouts, was engaged in an exploring expedition to the Rocky Mountains, under the auspices of Col. Thomas H. Benton, and made report to the department written by him, the said Carrey, in the English language, of which report said Carrey was accustomed to speak with complacency as showing the familiar acquaintance of him, the said Carrey, with the English language; he states that said Boutcum has resided for years in this country, and during that time has associated freely with the English speaking portion of the community, that he speaks English intelligibly and with considerable fluency, and he refers to letters marked "A," "B," "C," "D," and "E," written by said Boutcum, and letters marked "K," written by said Carrey, and attached to this answer as further evidence of the familiarity of both of said complainants with the English language.

Defendant admits that complainants did accordingly draw blank drafts on Messrs. Angelrodt and Barth, and sent them to Tesson and Danjen for collection, but defendant says that said blank drafts were forwarded for the purpose of renewing drafts of said Boutcum and Carrey, then maturing as Angelrodt and Barth, and for collection and negotiation, and that they were always respectively applied to those purposes and to no other by said Tesson and Danjen.

Defendant admits that on or about the 12th March, 1857, said Tesson and Danjen did represent to said complainants the fact that there was due to said Tesson and Danjen, by said complainants, the sum of $5,500 00 for advances made by them to said complainants, and did request of said complainants securities for said advance, and that such a note and deed of trust as that reference in the complaint of said complainants was executed by said complainants.

Defendant says that the property conveyed in said deed of trust was inserted in said deed and at the express request of said complainants, and that the description of the property conveyed by said deed was made from data furnished to said Tesson and Danjen by said Boutcum and Carrey, and is in strict accordance with said data.

This deed of trust was signed in St. Louis, by Paul Carrey, one of said complainants, with full knowledge of its contents, and he then and there offered to sign it in the partnership name of Boutcum and Carrey, which offer being refused, the said deed was sent up to said Boutcum and Carrey, in Woodford County, Illinois, to receive the individual signatures of each of them, that it was signed by them, the said Boutcum and Carrey, individually, in the presence of their clerk, that it was left by them at the proper office to be recorded, and when recorded, was returned to said Tesson an Danjen by said

Boutcum and Carrey, as appears by letters of Boutcum and Carrey, dated April 25th, 1857, herewith appended and marked "B."

This defendant cannot state whether or not said complainants read over said deed of trust before signing it, but he states that the deed of trust was written out whilst Carrey was in St. Louis, that it was drawn up to secure a balance which said Carrey admitted to be due by said Boutcum and Carrey to said Tesson and Danjen, that the contents thereof were fully explained to said Carrey, and that with the full knowledge of its contents, said Carrey offered to sign it for Boutcum and Carrey.

This defendant expressly denies that said Boutcum and Carrey, or either of them, were ever assured by said Tesson and Danjen, or either of them, that either said note or said deed of trust was intended merely for security, and was not intended to coerce said complainants to pay said indebtedness, and that said defendants would give time to said complainants, as stated in their said complaint.

But this defendant says that at the time said deed of trust was drawn up, this defendant stated to said complainant, Carrey, that the money would be demanded when due, and said Carrey then stated to this defendant and his partner, Danjen, that at the maturity of said note, *of said note*, they would pay it, and this defendant refers to the letters of said Boutcum and Carrey, dated May 19th, 29th, 1857, marked A and D, respectively, and hereto appended, for the purpose of showing that said Boutcum and Carrey expected to pay said note at its maturity, and begged an extension of payment of said note as a favor. Defendant admits that said complainants were dealing with Tesson and Danjen for about a year, but says that on or about 1st August, 1857, Tesson and Danjen refused to make further advance to complainants except upon accepted drafts of Angelrodt and Barth, and this defendant says that no advance was made by said Tesson and Danjen to said complainants since the 1st August, 1857, and he expressly denies that dealings were continued between said complainants and Tesson and Danjen, until some time in October last, as stated in complaint of complainants.

He admits that said Boutcum and Carrey have drawn from said Tesson and Danjen about fifty thousand dollars.

He denies that no regular settlement was ever made between the orator and said Tesson and Danjen, as stated in said complaints, and states that the transactions between said Tesson and Danjen and said Boutcum and Carrey have been large, and the said Tesson and Danjen have invariably been in advance to said Boutcum and Carrey, that settlements have frequently been made between said parties by rendering current accounts, which have been duly acknowledged, and their correctness admitted by said Boutcum and Carrey, the account of said Boutcum and Carrey, up to 20th May, 1857, made out in the handwriting of complainant, Boutcum, being a balance against said Boutcum and Carrey, in favor of Tesson and Danjen, of cash, $2847, exclusive of interest and discount, is marked

F, and herewith appended, and the letters of said Boutcum and Carrey, accompanying said account, is marked "C," herewith appended, the last account rendered 10 August, 1857, a balance in favor of said Tesson and Danjen of $3263 68 at the time of the execution of the deed of trust and note before referred to, the accounts between the complainants and Tesson and Danjen were shown to complainant Carrey, it then appeared by said accounts that there were due to said Tesson and Danjen, by said Boutcum and Carrey, a balance of $6000, which said complainant Carrey then admitted to be due to said Tesson and Danjen, and admitted at the same time the correctness of said account, and this defendant expressly denies that said note and deed of trust were delivered under any assurance that said Tesson and Danjen would make the same right, and indulge the orators, as stated in the orators' complaint, and again refer to the letters marked "A" and "D," from which it appears that the orators begged of Tesson and Danjen, as a favor, the renewal of said note.

Defendant, for a further answer, says, that it is not true that the deed of trust in question, provides for a sale after a notice, which could not be accessible or available to the orators, and says that the terms of notice inserted in said deed of trust were inserted with the full knowledge and consent of said Carrey, who knew of said terms, and made no objection thereto.

Defendant expressly denies *denies* that the real estate, and the distillery thereon erected, described in said deed of trust, are now worth more than forty-five thousand dollars, and that the personal profits therein conveyed, is worth between four and five thousand dollars; he has no knowledge as to what said property may have cost complainants, but he is informed, and believes that said property, or so much thereof as now remains, is not worth twenty thousand dollars, and that it is covered by the lien of a mortgage from said Boutcum and Carrey to Angelrodt and Barth, to secure the sum of five thousand dollars, which lien is a prior incumbrance to the deed of trust hereinbefore referred to, and *and* that said property is further incumbered by mechanics' lien, to the amount of over two thousand dollars, which liens are also prior liens to the deed of trust before mentioned.

Defendant denies that on or about the 12th September, 1857, said Tesson and Danjen requested the orators to give them security for about five thousand five hundred dollars, in addition to the sum already received, but admits that they did, on or about 12th September, 1857, through their agent, L. E. Suber, request the complainants to give them further security, whereupon the said complainants voluntarily offered to give a power of attorney to confess payment for the sum of eight thousand dollars, which was less than the amount then due by said complainants to said Tesson and Danjen, not secured by the deed of trust aforementioned.

Defendant says, that at the time said Tesson and Danjen held

drafts of said Boutcum and Carrey on Angelrodt and Barth, accepted by said Angelrodt and Barth for the sum of about fourteen thousand dollars, on which said Boutcum and Carrey were liable to said Tesson and Danjen in case of non-payment, that drafts on maturity were not paid, that said Tesson and Danjen were compelled to sell said drafts, and that at this time said Tesson and Danjen held said Boutcum and Carrey's drafts on Angelrodt and Barth accepted by said Angelrodt and Barth for the sum of nine thousand dollars, which drafts, as they are advised, will not be paid at maturity; defendant further says, that he expressly denies that allegation of the complaint that said complainants signed said instrument without reading or causing it to be read to them, as stated in the complainant of said complainants, or that at the time of signing said writing the orators did not know what it was, or that they were not informed of its nature by the agents of them, the said Tesson and Danjen.

Defendant admits that at the time of the execution of said power of attorney it was agreed verbally by said Tesson and Danjen, through their agent, that on the full payment and satisfaction of the judgment for eight thousand dollars, the aforesaid deed of trust should be cancelled.

Defendant denies that said complainants supposed that said instrument of writing was nothing more than a mortgage, or that it was intended to secure an indebtedness on final settlement, or that the same could not be foreclosed without a decree of court, or that they did not know the real character of said instrument.

Defendant denies that the character of said instrument show bad faith on the part of Tesson and Danjen, and he denies any and every allegation of the complainant going to state that complainants were not, at the time of requiring said instrument, well and fully instructed as to and aware of its contents.

Defendant submits that whether the instrument in question is of a stringent character, and whether its enforcement at this time could secure the complainants, are questions to be decided by complainants before the execution of said instrument, which he avers was executed by the complainants with a full knowledge of the conveyance; and defendant states that the further securities to Tesson and Danjen represented by the power of attorney in question was fully and voluntarily given, that it was given moreover in fulfilment of repeated and most serious and solemn engagements of said Boutcum and Carrey, and each of them, on their honor as gentlemen and men of business to protect said Tesson and Danjen in their advances to said Boutcum and Carrey, that since its execution said Boutcum has acknowledged to this defendant that he understood its tenor and recognized its validity.

And this defendant states that the complainants anticipated a sale under the said confession of judgment, as will appear by a copy of their letter herewith appended and marked "E," the original of which letter is filed with the separate answer of defendant Suber,

and which letter bearing date 4th November, 1857, referring to the confession of judgment and advising a further of execution is in direct contradiction to the statement of complainants, that they did not understand the legal effect of the paper they had signed until it was explained to them on the 28th November, by their counsel in this cause.

Defendant denies that said complainants were permitted to continue in pursuit of business in fancied security as stated in their complaint, until 23d day of November last, when the levy was made by the sheriff of Woodford County, and he says that they were duly notified that execution would issue on the judgment, and he refers to the copy of this letter of 4th November, 1857, marked "E," and herewith and appended in which they make mention of having received notice that the sheriff would make a levy on their property in sixty days.

Defendant denies that the orators were ignorant that judgment had been rendered against them until a few days before bringing their complaint as stated in said complaint, or until they were informed by their counsel, as stated in their complaint, or that not the slightest intimation that the said Tesson and Danjen intended to put into operation the judgment against the complainants had been given to them till the 21st November, 1857, and again refer the titles of complainants marked "E," and herewith appended, whereby it appears that they were notified of the intention of said Tesson and Danjen in regard to said judgment before 4th November, 1857.

Defendant denies that he had ever obtained from complainants any instruments of oppression of any nature whatever, and he denies that he had ever obtained from said complainants instruments of oppression or any sort of instrument fraudulently as stated in said complaint.

And this defendant further states, that so long ago as the month of July last past, Tesson and Danjen notified and warned said Boutcum and Carrey not to rely upon them for further indulgence, and not to increase the indebtedness of said Boutcum and Carrey to said Tesson and Danjen, and that in the month of August last past said Tesson and Danjen protested the draft of said Bouteum and Carrey.

Defendant admits that friendly relations were maintained between said Boutcum and Carrey and said Tesson and Danjen, until some time subsequent to 21st of November, 1857; that up to that time said Boutcum and Carrey, and especially said Carrey, at all times assured said Tesson and Danjen, that, in any event said Tesson and Danjen should be secured before all other creditors on account of the cash advances made by them, and on account of the personal esteem and friendship professed by said Boutcum and Carrey and said Antoine L. Danjen, that said Carrey pledged his honor to said Danjen, and that his private resources in France should be forthcoming to meet the indebtedness to said Tesson and Danjen, and such friendly relations were broken by fraudulent attempts on the part of said

Boutcum and Carrey to deprive Tesson and Danjen of the security which they, the said Boutcum and Carrey themselves have voluntarily offered to them, the said Tesson and Danjen, and by boasts of the said Boutcum and Carrey that they would pull the wool over the eyes of Tesson and Danjen.

Defendant further states, that, long before the levy of the sheriff referred to in the complaint of said Boutcum and Carrey, said Boutcum and Carrey were duly apprised by said Tesson and Danjen, both by letter and in personal interview, that the judgment and deed of trust in question could be foreclosed and proceeded with to execution, and that further delay would not be granted, and that said Tesson and Danjen, in November last, offered to take the name of William S. Ewing & Co. as security from said Boutcum and Carrey, if it could be procured by them; but it was not procured at the time of their offer; said Boutcum and Carrey admitted the correctness of the demand of said Tessen and Danjen, and their legal right to proceed under the judgment and deed of trust aforesaid.

Defendant admits that, some time about four or five weeks ago, said Lamar E. Suber, agent of the said Tesson and Danjen, did leave St. Louis for Woodford County, Illinois, whilst Mr. Boutcum was in St. Louis engaged in negotiating with said Tesson; but this defendant expressly denies, that said Suber returned to Woodford County on that occasion secretly as stated in the complaint of the orators; and he says, that he himself informed said complainant, Boutcum, at the time that said Suber left, that said Suber had returned to Woodford County, and at the same time told said Boutcum, why said Suber had so returned, namely, to frustrate certain fraudulent attempts that had been made by said Boutcum and Carrey to impair the security of said Tesson and Danjen contrary to the repeated promises of said Boutcum and Carrey.

Defendant denies that any false or fraudulent representations were made at that time by said Suber to said complainants, or either of them; and says, that he went with the sheriff to make the levy upon the property at the request of said complainant, Carrey.

Defendant denies that said deed of trust and said judgment, or either of them, were obtained by fraud, artifices, or misrepresentations; or that said complainants, or either of them, were entrapped and inveigled by said Tesson, or his agent, into executing said instruments, or either of them; or that they signed said instruments, or either of them, without reading the same; or that they were not acquainted with the character and effect of said instrument as stated in the complaint of the orators.

Defendant does not know to what extent the complainants, or either of them, are ignorant of the laws of the land in which they lived, or of other matters; but he submits that an ignorance falling short of imbecility of mind will hardly stand them instead in an attempt to avoid their contracts.

Defendant, however, states, that he knows that they are not

wholly ignorant of law, as they themselves proposed to him to give to Tesson and Danjen a deed of trust rather than a mortgage as affording a security more available and susceptible of a more expeditious foreclosure at the time the deed of trust was given a settlement was made; the deed of trust was given to secure the balance then found to be due Tesson and Danjen, and the complainants stated that they would give Tesson and Danjen a deed of trust, as Angelrodt and Barth held a mortgage on the property already, and they desired to give said Tesson and Danjen the priority, and their deed of trust could be foreclosed before the mortgage of Angelrodt and Barth.

Defendant admits that the sheriff had advertised said property for sale, as he legally might; and that he intended to sell the same pursuant to said advertisement, as he legally ought; the copy of the levy, marked "D," is presumed to be correct.

Defendant states that, at the time of the execution of said power of attorney, said complainants, and each of them, were fully aware of the entire provision of said power of attorney and of the legal effect of the same; he denies that the real estate and personal property in question, is of the value stated in the complaint of the orators; admits that the distillery was, until recently, in operation, but knows nothing as to the age or condition of the works.

Defendant admits that money is unusually scarce at this time, and states that himself and his co-partner, Danjen, have already suffered grievous loss from the tightness of the money market, which is one reason why they are desirous to collect what is due them from Boutcum and Carrey in the manner provided by law, and the agreement of the parties. But defendant is unable to say, whether or not the property in question, if sold for cash, would suffice to satisfy the indebtedness of said Bouteum and Carrey to the said Tesson and Danjen. Defendant denies that the said Tesson and Danjen have any desire to procure the property aforesaid; he states that they desire only a return of the money advanced by them to Boutcum and Carrey, and security for their liabilities on account of said Boutcum and Carrey, and that the said Tesson and Danjen have offered to said Boutcum and Carrey to accept approved paper at any time for the indebtedness of said Boutcum and Carrey to them, which offer has not been accepted by said Boutcum and Carrey.

Defendant admits, that said deed of trust has not been released, or satisfied of record, but denies that it, or any of its provisions are fraudulent or unjust; or that it was, or ought of right to have been, cancelled by the confession of judgment aforesaid.

Defendant states that he has agreed, and is still ready to enter satisfaction of said deed of trust, when the $8000, due by said Boutcum and Carrey to Tesson and Danjen, and for which they have confessed judgment, is paid.

Defendant admits, that the debt aforesaid of $8000, due and owing at the time, and still due by said Boutcum and Carrey to said Tes-

son and Danjen, was the only and all-sufficient consideration for said confession of judgment.

Defendant denies, that defendants Tesson and Danjen, at any time, made representations to said Boutcum and Carrey, calculated to lead them to anticipate any indulgence which they have not already received.

Defendant denies, that said sheriff, Abia Minor, has conspired with him, or any other person or persons, to ruin or injure the orators, or either of them, as charged in the said complaint; he denies that he has at any time offered said Minor $1000, or any other sum, to arrange said indebtedness, as set forth in said complaint; he denies that he has conspired with the parties set forth in the complaint, or with any or any one of them, or with any other parties, for the purposes set forth in the complaint.

Defendant denies, that the said real estate and distillery are ample security for double the amount of said indebtedness; he denies that said property is insured for $800, as stated in said complaint, and positively avers, that the only insurance on said property, in which himself and his partner Danjen, or either of them, have any beneficial interest, or are insured, in the St. Louis Insurance Company, for $3000, the policy of which is herewith appended, marked "H;" that said policy was granted on 9th July, 1859—that it recites a premium insurance of said Boutcum and Carrey for $300Q, on said property—that by the terms of said policy, any additional insurance to secure $3000, in any office whatever, will vacate said policy; and that this defendant has repeatedly, since July, endeavored to obtain further insurance on said distillery and premises, beyond the total of $6000, already insured thereon, but no insurance office would venture a further risk thereupon. Defendant states, that the real estate is of little value; that the valuable property, or the improvements before referred to, that they are liable to destruction by fire, and are a hazardous risk.

Defendant further states, that he denies that said Boutcum and Carrey can or will discharge their indebtedness to Tesson and Danjen, if permitted to carry on their business, within the time set forth in the complaint; he states, that the duly authorized agent of said Tesson and Danjen offered to give the complainants 4, 6, 8, 10, 12, 16, and 18 months time, on said indebtedness, on the notes of said Boutcum and Carry indorsed by Christian *Christian* Farris, provided said notes were judgment notes.

He says, that said Farris was willing then to become security for said Boutcum and Carrey, as he is informed and believes; but that said Boutcum and Carrey refused to accede to the terms, although they fully admitted the indebtedness, and recognized the validity and justice of the means taken by Tesson and Danjen to secure it, and proposed to give their own notes endorsed by said Farris for the amount, and at the dates above specified, provided said notes should not be judgment notes.

Defendant says, that both said power of attorney and said deed of trust, are both in law and in equity, in truth and in fact, the solemn and deliberate act and deed of said Paul Carrey and said Charles Boutcum, expressing the intention and agreement of said complainants, fully explained to and understood by them when executed—fully recognized by them on many occasions since—and obtained honestly, and without any fraud, concealment, or misrepresentation whatever.

Defendant will not deny, that Paul Carrey and Charles Boutcum may be ignorant men, as so often averred by them in their complaint; nor that they may be confidence men, unsuspecting confidence men, as they aver; but he states, that in their transactions with himself and his partner, no grounds were offered by said Tesson and Danjen for the varias of suspicion; that no advantage was taken of the alleged ignorance of said Boutcum and Carrey, and no special confidence reposed by them in said Tessen and Danjen, which has been in any way betrayed; and that, however ignorant of other matters, said Boutcum and Carrey were perfectly informed of the nature and legal consequences of any step taken by them, in the proceedings set forth in the complaint of the orators.

And defendant, for a further answer to the complaint of the orators says, that the first business dealings between said Boutcum and Carrey and said Tesson and Danjen commenced in this wise: in the autumn of 1856, Paul Carrey applied to Antoine L. Danjen begging most earnestly for a loan or advance of $2000, stating that Angelrodt and Barth would advance to us funds to Boutcum and Carrey; that $2000 carry them them through; that they were ruined unless they could get it; and that their sole reliance was upon the kindness and good offices of said A. L. Danjen. Upon these moving representations, the said Danjen prevailed with his partner Tesson, to accede to an advance of $2000; before receiving which, the said Carrey, for himself and partner, solemnly promised said Tesson, that come what would, Tesson and Danjen should have security prior to any other creditor, if the advance was granted, and that it would be forthcoming on demand; these promises were afterwards confirmed by said Boutcum, and by Edward Menard, the agent of the parties at that time; when their first advance of $2000 was made, said Boutcum and Carrey stated that they would need no more, and it was to be repaid in spring, hence the demand for security, when a further advance was required. Tesson and Danjen never promised any indulgence; they made this advance on the assurances by said Boutcum and Carrey, that they would be punctually repaid at maturity, and there was no question of indulgence until the maturity of the respective demands; accounts were duly had between said Tesson and Danjen, and Boutcum and Carrey, and the correctness of the accounts, and of the balance struck, were frequently expressly admitted by said Boutcum and Carrey; the account rendered on January 2d, 1857, was balanced in the pass book of said

Boutcum and Carrey with said Tesson and Danjen, and returned to them with the vouchers balanced by $787 19 in favor of said Tesson and Danjen; the correctness of this account was admitted by Boutcum and Carrey; statements of accounts between said Tesson and Danjen, and said Boutcum and Carrey are herewith appended, and marked "F" and "G." The account marked F, is in the handwriting of said Boutcum, and shows a balance in favor of Tesson and Danjen of $2847, exclusive of interest nnd discounts; this account is of date long subsequent to the notes and deed of trust referred to in the complaint, and altogether independent of that liability of $5500, for which they received due credit on account against the cash advanced at the time the note was given; the account herewith appended and marked "G," is a full account up to date, made out from the books of Tesson and Danjen, and sworn to by their bookkeeper, Cornelius Daly, who had been their only individual bookkeeper, during the period of time embraced in the account.

Defendant avers that having advanced once to Boutcum and Carrey and Danjen, was induced to advance further to secure former advances, and when at last further advances were positively refused, Boutcum stated to said Tesson that the interests of Tesson and Danjen and Boutcum and Carrey were now so closely united to be safely separated, that if said Tesson and Danjen now withdrew they would lose the advances already made, stating, however, that the chances of Tesson and Danjen were better than those of Angelrodt and Barth, as Angelrodt and Barth were secured by mortgage only, whilst Tesson and Danjen had a deed of trust, and a deed of trust embracing all the personal property on which Angelrodt and Barth had no lien.

Defendant further avers that he has good reason to believe and does believe that the establishment of said Boutcum and Carrey in Woodford County, Illinois, was built up almost altogether on the funds of the creditors of said Boutcum and Carrey, that said Boutcum and Carrey together never devoted to the amount of five hundred dollars each of their own money in the concern; that the property in Woodford County, of the sacrifice of which the orators so bitterly complain, represents the frauds which the orators, with all the ignorance and confidence on which they insist so much in their bill, have succeeded in obtaining from time to time of Angelrodt and Barth, Tesson and Danjen, Edward Menard, Christian Farris, and others, that the whole affair was in truth a speculation in which the creditors of Boutcum and Carrey run all the risk, and of which Boutcum and Carrey intended to reap and have reaped all the profits.

Said defendant, therefore, says that the fraud in the transaction between said Tesson and Danjen, and said Boutcum and Carrey, has been altogether the fraud of said Boutcum and Carrey, that in the confidence of said Tesson and Danjen in said Boutcum and Carrey that has been betrayed, and that it is the ignorance of him, the said

Tesson, of the real character of said Boutcum and Carrey, rather than the ignorance of business which said Boutcum and Carrey so pertinaciously arrogate to themselves, that has brought about the present state of affairs; said Tesson says that in the transactions between said Boutcum and Carrey and business, he, the said defendant, is the innocent and injured party. Defendant says that he has carefully read the separate answer of defendant Garesche and defendant Suber, and that so far as said answers state facts of which he was personally cognizant, he knows said answers to be true, and state he believes that each and every statement of said answer is true; and said defendant further says that he denies all and every charge of fraud and conspiracy contained in the bill of the orators, and he further says that all allegations and each several allegation of said bill not expressly traversed by him, the said defendant, in this his separate answer, are by him, the said defendant, denied *in toto*, and the defendant calls for strict proof of the same, and having fully answered, said defendant prays to be discharged with costs, &c.

EDWARD P. TESSON.

State of Missouri, County of St. Louis, ss.

Edward P. Tesson, being duly sworn, upon his oath says that the foregoing answer in chancery by him submitted, is true in substance and in fact to the best of his knowledge, information, and belief.

EDWARD P. TESSON.

Sworn to and subscribed before me, this 22d December, 1857. Witness my hand and official seal.

[SEAL.] R. A. BAKEWELL, Notary Public.

Exhibit A.

Forneyville, May 18th, 1857.

Messrs. Tesson and Danjen, St. Louis, Mo.

Dear Sirs: Your favor of the 15th inst. is just on hand. Some days ago we had written a letter to Mr. E. Manard, and, thinking he was in St. Louis, we did not write to you, as he had full power and approbation to do everything necessary; he had also regular power to sign drafts for us, and knew our intention to send by your hands all our drafts on Angelrodt and Barth, we thought he had given new ones. To date all the shipments of whiskey we have been able to effect on the railroad are in amount 656 barrels; before end of the week we hope to have at least 100 barrels more. We work now regularly not as well though *thoru* we would do and hope to do before long. As Mr. Menard is gone from St. Louis, we inclose you in this letter four drafts of ten hundred dollars each on Angelrodt and Barth, am't $4,000 with date in blank, of which please dispose awarding to our arrivals of whiskey in the hands of A. & B., and with kind reserve and you have had for us, we had sent to Mr. E. Menard a statement of am'ts of A. & B. for

whiskey and for all notes and drafts now due and to be due for one month in your office, so that he would give you notice of it; he has had probably left St. Louis before arrival of that letter, we shall send you copy of it in our next. We hope you shall be kind enough to give us a renewal of our note $5,500, due 25th–28th instant, for ninety days more, please in that case instruct us as to all formalities to be filled for the removal of deed of trust, and we shall do them immediately. Please excuse this letter written in a hurry.

Yours respectfully,
BOUTCUM and CARREY.

Exhibit C.

Forneyville, May 20th, 1857.

Messrs. Tesson and Danjen, St. Louis, Mo.

Dear Sirs: We hope our letter of yesterday in answer to your favor of 15 inst., will arrive duly in your hand. We did enclose in it four drafts to your order on Angelrodt and Barth, for $1000 each payable 60 days after date, date left in blank. We send you this day the statement of the whiskey, and having left the R. R. station till date, and shipped to Messrs. Angelrodt and Barth, am't seven hundred and seven barrels. We enclose also statement of ac't with you from 15th of April till date, so that you may correct if *if* we have some error. We had not the date of the a'n A. & B. in April, anterior to the second of 30th same month, and shall be obliged to you to let us know it. We have to give you advice of the following payments we have to protect in your offer:—

May 24–27th, draft to N. B. Curtis & Co., 10 days after date, due arrival,	$300 00
May 30–1st June, note 30 days after date, to Wenger, Fey & Co.,	157 44
June 2–5th, Thomas Pfeiffer,	650 00
	$1,107 44

We refer you to our last concerning our note of $5,500, and hope for a prompt answer.

Yours, respectfully,
BOUTCUM and CARRY.

Rec'd 25th May, '57.

Exhibit B.

Forneyville, Aug. 25th, 1857.

Messrs. Tesson and Danjen, St. Louis, Mo.

Dear Sirs: We have this day to Peoria 200 barrels, which were to be shipped probably Monday, perhaps to-morrow, for St. Louis. We have been told by Mr. Barth that after receipt some days ago of 100 bar'ls, he had accepted one of the drafts for $1000. We had left in your hands this invoice of 200 bar'ls shall complete the

$2000, and leaves at our disposal at Angelrodt and Barth the possibility of a new draft for $1000, which we send you with date in blank, in case of possible delays on the river, in reason of most imperious necessities here. We have this day given to Mr. M. N. B. Curtiss & Co., a draft for $1000 on your house, at ten days after date. We pray you to keep to meet that note, the $1000 of the draft we sent you this day and still pay over the note of Heinrich $428; the last snow and rain have made our railroads worst than ever and stopped all freight trains; they are beginning to run again, and if the weather keeps dry there is probability that in about one or two weeks the track will be in good running order; the superintendent has promised us four empty cars for Monday or Tuesday. We hope then to forward 200 bar'ls more in four or five days; we pray you to honor a check of us for $182 79 with next invoice; we will send you as agreed with Angelrodt and Barth new drafts with list of the notes to be met. We now have no certificates about the invoice of our whiskey on the railroad; we prefer you keep those $1000 for the draft, Curtis, till new arrival to every other thing. It being important for us to protect our credit here. The deed of trust has been sent many days ago to the recorder, but is not yet ready; as soon as we may get it back we shall send it to you.

Very truly yours,

BOUTCUM and CARRY.

Exhibit D.

Forneyville, May 29th, 1857.

Messrs. Tesson and Danjen, St. Louis, Mo.

Dear Sirs: We have from this morning only on hand your favor 21, 22d, and 26th inst., from which due note is taken; the draft for one thousand dollars, $1000, to N. R. Curtis & Co. was out, waived by a mistake of being to much hurried it was not made so, but next day advice of it was sent to N. R. Curtis, who made immediate notification on of it to their correspondent in St. Louis, as it was our agreement with them, and they took our paper in that form at 30 days good terms; we shall in a few days try to make them take those drafts, but we would not do all at once as to the draft of Eichhoff, his drawing in that form and way being quite contrary to what had been agreed; we refuse payment of it positively; we are very surprised Messrs. Angelrodt and Barth have only received 360 barrels; we have bills of lading of the R. R. for over 800 barrels cars having left the station; we will *imprise* how they can be detained so long on the road; we thank you for the renewal of the loan of $5,500; we have now no new bills, notes, or drafts, to give you advice from and made payable in your house before the $1000 draft Curtis & Co.

Yours, respectfully,

BOUTCUM and CARREY.

Exhibit "E."

Copy of Boutcum and Carry's letter to Tesson and Danjen, written by Chas. Boutcum.

Forneysville, Nov'ber 4, 1857.

Messrs. Tesson and Danjen, St. Louis, Mo.

Gentlemen: The title of judgment, confessed and signed by us in your favor on the 22d day of Sept. last, for the sum of $8000, has been presented to us by the sheriff of our county, Woodford Co., with advice that he should be under necessity to make the levy on our property at the expiration of sixty days from date of said deed (say 22d inst.). He told us he would not delay any further than that the execution without receiving direct instructions from you drawn according to the law, and giving him authority to postpone that measure, and also protecting him against the responsibility he should incur in doing so without your regular authorization, it may be done so that he should defer it till new instructions from you; we hope you will be willing to give us that prolongation and do it in time, through a good many difficulties and with much pain we have succeeded to arrive *tille* now, and we may hope to arrive in better time before long; the new corn begins to come in, it is in great abundance around us, and we will get it at cheap prices and easy terms; we may then own that our house is in good order, hope to be working with benefit and *amelionate* our condition.

We remain gents, yours very truly,

(Signed) BOUTCUM and CARRY.

The original of this letter is attached to the answer of L. E. Suber in Circuit Court, Peoria County, Dec. 1857.

L. E. SUBER.

Exhibit "F."

Boutcum and Carrey in acc't with Angelrodt and Barth.

Aug. 30.	By whiskey sold, 292 bbls., net proceeds,		2926	82
	To cash rec'd,	600		
	To acceptance order Tesson and Danjen,	2000		
May 20th.	By bal. or old acc't,		326	82
	By whiskey sent, acc't of sales not received, 415 bbls. net,		4500	
	To acc't Tesson and Danjen,	2000		
	By B. & C. cr. by bal. to date, $2826 82			

Boutcum and Carrey in acc't, Tesson and Danjen.

Aug. 1.	To bal. of old acc't	2225	
	By adv. Angelrodt and Barth,		1000
30.	By " " "		1000
4.	By " " "		500
7.	By " " "		1500

6.	To payment of notes, Albert Pathoff & Co.,	600
6.	To payment of draft 3 days' sight, by Eichhoff,	300
8.	To p'd N. B. Curtis & Co.,	1000
11.	To " "	500
12.	To f. note, Rey and Howlett,	400
15.	To draft, N. B. Curtis & Co.,	900
17.	To " " "	300
20.	To " " "	500
	To f. check, date unknown,	122

B. & Co. drs., total to date, $2847, and to added interests and discounts.

Exhibit "G."

Tesson and Danjen, Bankers.

		Cr.
1857, Aug.	12. By cash,	952 99
	17. " "	952 99
	20. " "	762 41
	25. " "	952 99
	31. " "	952 99
Sept.	7. " "	952 99
	12. " "	936 00
	Balance,	2645 49

State of Missouri, County of St. Louis, ss.

Cornelius Daly being sworn, says, is bookkeeper for Tesson and Danjen, and states that the above account is taken from the books of Tesson and Danjen, and this affiant believes the account to be correct. CORNELIUS DALY.

Sworn to and subscribed before me this 18th day of December, 1857. PETER W. DOHINTOSY,
Justice of the Peace.

"G." Boutcum and Carrey, in acc't with.

		Dr.
1857, Aug.	10. To balance,	3263 68
	11. " draft,	775 00
	12. " draft,	1000 00
	14. " draft,	44 00
	21. " check,	40 00
	26. " draft,	700 00
	27. " check,	25 00
	28. " check,	30 00
	29. " note, Eddy, Jans & Co.,	782 47
Sept.	3. " check,	40 00
	5. " check,	30 00

Sept.	7.	To check,	5	
	7.	" check,	62 25	
	7.	" draft and protest,	1001	
				1068 75
	11.	" check,		15 00
	12.	" draft,		1000 00
	14.	" check,		38 60
	16.	" check,		35 00
	19.	" check,		10 00
	23.	" check,		15 00
Oct.	2.	" check,		20 00
Nov.	27.	" check,	26	
	27.	" check,	48 35	
				74 35
Dec.	8.	" check,	32	
	8.	" E. Menard,	70	
				102 00
				9108 85
		To balance, E. & C. E.,		2645 49

CORNELIUS DALY.

Exhibit "K."

Forneysville, 22d June, 1857.

Gentlemen: We refer you to our letter of the 15th instant, giving you advice of one draft 10 days of the 15th, for $500, and another same date at 15 days, for $1500, and give you to-day advice of a draft 15 days of to-day, for $1000, and another one 25 days, for $100. Yours, very respectfully,

BOUTCUM and CARREY.

To Messrs. Tesson and Danjen, Bankers, St. Louis, Mo.
Rec'd 25 July, '57.

Exhibit "H."

St. Louis Insurance Company. Fire Policy, No. 9868.

This Policy of Insurances witnesseth: That the St. Louis Insurance Company, in consideration of the sum of one hundred and eighty dollars to them paid, the receipt whereof is hereby acknowledged, do insure against loss or damage by fire Messrs. Boutcum and Carrey to the amount of three thousand dollars on their brick and frame steam-distillery, buildings, engine, boilers, and machinery thereto belonging, situated at Forneysville, Woodford County, Illinois.

For *for* a particular description of said premises, reference is hereby made to application No. 9868 and diagram on file in this office, and made a part hereof: $3000 on same property insured at Com-

mercial Ins. Co., and permission to induce $3000 more is hereby granted, without prejudice to their policy. Loss, if any, payable to Messrs. Tesson and Danjen, of St. Louis.

And the said company do hereby promise and agree to make good unto the said insured, their executors, administrators, and assigns, all such loss or damage not exceeding in amount the sum insured as shall happen by fire to the property, as above specified, during six months, to wit, from the ninth day of July, one thousand eight hundred and fifty-seven (at twelve o'clock at noon), unto the ninth day of January, one thousand eight hundred and fifty-eight (at twelve o'clock at noon); the said loss or damage to be established according to the true and actual value of the said property at the time the same shall happen, and to be paid within sixty days after due notice and proof thereof made by the insured in conformity to the conditions annexed to this policy.

Provided always, and it is hereby declared, that this corporation shall not be liable to make good any loss or damages by fire, which may happen or take place by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power, earthquake, or hurricane; and provided always, that, in case the insured shall have already any other insurance against loss by fire on the property hereby insured not notified to this corporation and mentioned in or endorsed upon this policy, then this insurance shall be void and of no effect; and if the said insured or their assignees shall hereafter make any other insurance on the same property, and shall not with all reasonable diligence give notice thereof to this corporation, and have the same endowed on this instrument, or otherwise acknowledged by them in writing, this policy shall cease and be of no further effect; and in case of any other insurance upon the property hereby insured, whether prior or subsequent to the date of this policy, the insured shall not, in case of loss or damage, be entitled to demand or recover on this policy any greater portion of the loss or damage sustained, than the amount hereby insured shall bear to the whole amount insured on the said property; and it is agreed and declared to be the true intent and meaning of the parties hereto that, in case the above-mentioned property or premises, or any part thereof, shall at any time after the making and during the time this policy would otherwise continue in force be appropriated, applied or used to or for the purpose of carry on or exercising therein any trade, business, or vocation, denominated hazardous or extra hazardous, or specified in the memorandum of special rates in the terms and conditions annexed to this policy, or if there shall be deposited, kept, or stored therein any of the articles, goods, or merchandise on the same term and condition denominated hazardous or extra-hazardous, or in or included in the memorandum of special rates, except as herein specially provided for, or hereafter agreed to by this corporation, in writing, to be added to or endorsed upon this policy, then and from thenceforth so long as the same shall be so appropriated, applied, or used, these presents shall

cease and be of no more force or effect; and it is moreover declared, that this insurance is not intended to apply to or cover any books of account, written securities, deeds, or other evidence of title to lands, nor to bonds, bills, notes, or other evidences of debt, nor to money or bullion, and this Company will not be liable for any losses by fire in consequence of neglect or violation of laws or regulations of police existing and in force at the date of this policy made to prevent accidents from fire in places where law and regulations upon this subject exist; and it is conditioned that no greater amount than twenty-five pounds of gunpowder shall at any time be placed in the building described in this policy; said powder to be kept in tin or other metallic canisters, and that all friction matches shall be also kept in tin or other metallic vessels, except which may be kept by wholesale dealers contained in close wooden boxes containing not less than one gross; and that this policy is made and accepted, in *in* reference to the laws and conditions hereto annexed which are to be used and restored to in order to explain the rights and obligations of the parties hereto in all cases not herein otherwise specially provided for.

This insurance (the risk not being changed) may be continued for such further term as shall be agreed on, provided, the premium therefor is paid and endorsed on this policy, or a receipt given for the same. The interest of the insured in this policy is not assignable, unless by consent of this Corporation manifested in writing; and in case of any transfer or termination of the interest of the insured, either by sale or otherwise, without such consent, this policy shall from thenceforth be void and of no effect.

In witness whereof, the St. Louis Insurance Company have caused these presents to be sealed with their seal and signed by their president, and attested by their Secretary in the city of St. Louis, State of Missouri, on the ninth day of July, in the year of our Lord one thousand eight hundred and fifty-seven.

[SEAL.] G. K. M. GRUAEGELY, President.

Attest, THOS. WEBSTER, Secretary.

(Endorsed.)

To the Circuit Court of Peoria County, in Chancery, Charles Boutcum & al. vs. Edward P. Tesson.

Separate answer of defendant Tesson.

Filed Dec. 23d, 1857.

ENOCH P. SLOAN, Cl'k.

State of Illinois, Woodford County, *ss.*

I, Peter Doty, Clerk of the Circuit Court of Woodford County, do hereby certify that the foregoing to be true copies of the separate answer of Edward P. Tesson remaining on file in my office in the foregoing entitled cause.

Witness my hand and the seal of the Circuit Court of said county affixed at Metamora, this 25th day of February, A. D. 1859.

[SEAL.] PETER DOTY, Clerk.

(Endorsed.)

Filed Dec. 3d, 1857.

ENOCH P. SLOAN, Cl'k.

(Tesson's amended answer.)

$5500. St. Louis, Mo., March 25, 1857.

Sixty days after date we promise to pay to the order of Tesson and Danjen fifty-five hundred dollars, for value received, negotiable and payable without defalcation or discount at the banking house of Tesson and Danjen.

No. due BOUTCUM & CARREY.

In the Circuit Court of Woodford County by change of venue from Peoria County.

CHARLES BOUTCUM and PAUL CARRY

vs.

EDWARD P. TESSON, ANTOINE L. DANJEN, ABIA MINOR, PETER B. GARISCHE, LAMAR E. SUBER.

The amended answer of the defendants, Edward P. Tesson, Abia Minor, Peter B. Garische, Lamar E. Suber, to the complainants' bill of complaint filed in this cause.

These defendants further answering, say, by way of amendment to and explanation of their former answer filed in this cause, that the account filed with their former answer showed only the sum due them on account independently of the deed of trust referred to in said bill and answer, and that said deed of trust was made and given to secure a certain note which was to be, and was in fact, made executed after the date of said deed of trust, that is to say, one note dated St. Louis, Mo., March 25, 1857, payable sixty days after date, to the order of Tesson and Danjen, for the sum of fifty-five hundred dollars ($5500 00), made by said Boutcum and Carrey, negotiable and payable at the banking house of Tesson and Danjen, for the security of which to the extent of the said deed of trust the same was made and executed, and which said note was not included in the account heretofore filed with the defendants' former answer filed in this cause, to the best of their knowledge, information, and belief.

These defendants file also herewith a statement of the entire account between the said Tesson and Danjen and the said Boutcum and Carrey, complainants, with the amount of said note so as aforesaid included in said deed of trust thereto, added interest on said note excepted, and also the said note marked Exhibit A, by which it appears that at the time the judgment in complainant's original bill

mentioned was confessed, there was due to these defendants, Tesson and Danjen, about the sum of eight thousand five hundred and eighteen $\frac{86}{100}$ dollars from the said complainants, and these defendants state that the said account is correct to the best of their knowledge, information, and belief, and that the balance thereof, and also said note, is due and still wholly unpaid by the said complainants.

Said account is hereto attached marked "H," and made part of this account; and having fully answered, said defendants pray to be dismissed with their costs, &c.

N. H. PURPLE,
Solicitor for said defendants.

"H"		Tesson and Danjen.	C.	
1856.				
July	23.	By cash exchange on N. Y.	447	75
		" do.	457	70
		" do.	467	65
Aug.	27.	" currency	2660	00
	28.	" discount Angelrodt and Barth	2937	00
Sept.	17.	" discount and interest	1030	00
		Balanced by book. The book and vouchers returned to Boutcum and Carrey,	6980	40
1856.				
Sept.	17.	By cash balance	1468	83
	25.	" rec'd from J. May currency	50	00
	27.	" " J. B. Gerard	107	21
		Balance	1362	70
		Balance by book, the book and vouchers returned to Boutcum and Carrey	2988	74
1856.				
Nov.	10.	By cash discount Angelrodt & Barth exchange and int.	1455	00
		By cash discount Angelrodt & Barth exchange and int.	1468	50
	17.	By cash proceeds of 100 francs collection	19	32
	29.	" " 50 "	9	62
Dec.	16.	" drs. Angelrodt & Barth exchange	975	32
	27.	" " " exg. & int.	978	66
	31.	" " " "	978	66
Jan'y	2.	" " " "	968	66
		"Forward"	6853	74
		"Continued"		
		"Forward from page 1"	5123	04

Dec.	1.	To cash			311 00
	5.	"			100 00
	8.	"			116 00
	12.	"			250 00
	13.	"			95 00
	15.	"			38 75
	20.	"			4 50
	23.	"			100 00
	24.	"			400 00
	29.	"			500 00
	30.	"			50 00
	31.	"	int. to bal.	$1,749	500 00
1857.					
Jan.	2.	"	over aft.	4,290	
				6,039	
			Ap. dis. on cy.	775	52 67
1857.					
Jan.	2.	To balance			787 19
	2.	To cash, four checks			1313 00
	3.	" "			411 00
	21.	" "			500 00
	22.	" "			625 00
	27.	" "			600 00
	29.	" "			46 68
	31.	" "			500 00
Feb.	4.	" "			600 00
	5.	" "			505 00
	6.	" "			300 00
	11.	" "			50 00
	13.	" "			200 00
	14.	" "			700 00
	21.	" "			200 00
	24.	" "			1,500 00
March	3.	"	discount		2 09
	5.	"	check		256 29
	13.	"	"		600 00
	14.	"	"		210 00
	16.	"	"		40 00
	19.	"	"		144 80
	20.	"	"		30 00
	21.	"	"		230 00
	23.	"	"		800 00
	28.	"	"		150 00
	30.	"	"		400 00
April	1.	"	"		25 00
	2.	"	"		300 00

April	10.	To cash, check	30 00
	11.	" your note	3,100 00
		"Forward to fol. 3"	14,556 05
		"Continued from fol. 2."	
1857.		"Forward"	17,363 96
May	22.	By cash, dis.	967 99
	29.	"	967 99
June	4.	"	967 99
	11.	"	967 99
	15.	"	967 99
	19.	"	484 01
	22.	"	952 99
	26.	"	967 99
	30.	"	952 99
	30.	"	484 01
July	3.	"	967 99
	10.	"	952 99
	13.	"	580 80
	20.	"	952 99
	27.	"	952 99
	31.	"	476 51
Aug.	1.	"	952 99
	4.	"	952 99
	8.	"	952 99
		Balance	3,263 68
			37,052 82
1857.			
Aug.	12.	By cash, dis.	952 99
	17.	"	952 99
	20.	"	762 41
	25.	"	952 99
	31.	"	952 99
Sept.	7.	"	952 99
	12.	"	936 00
Jan.	22.	" ins. returned St. Louis Ins. Co.	96 00
March	15.	" " Peoria	50 63
		"Forward"	6,609 99
		"Continued from fol. 3"—"Forward"	6,700 15
Sept.	5.	To cash, check	30 00
	7.	" "	1,068 75
	11.	" "	15 00
	12.	" "	1,000 00
	14.	" exct. of L. E. Suber to Peoria Bank, as per agreement of B. & C. to draft all expenses	38 60

Sept.	16.	To cash, check	35	00
	19.	" "	10	00
	23.	" "	15	00
Oct.	2.	" "	20	00
Nov.	27.	" exct. of L. E. Suber in two trips to Peoria	74	35
Dec.	8.	" E. Menard	70	00
	8.	" L. E. S., Peoria	32	00
	22.	" check	50	00
1858.				
Jan.	2.	" L. E. S., Peoria	50	00
	6.	" " "	50	00
	25.	" insurance St. Louis Ins. Co.	120	00
	25.	" L. E. S., Peoria	24	00
Feb.	6.	To insurance at Peoria	80	00
May	1.	To L. E. S. & E. M. to Peoria and Metamora	46	00
		To note covered by deed of trust, said note is with T. & D.	5,500	00
			15,028	85
		To balance due Tesson and Danjen	8,418	86
		" Continued from fol. 3"—"Forward"	6,609	99
		By balance due Tesson and Danjen, including note for $5,500 and our draft on par. acct.	8,418	86
		" Carried forward from fol. 2."		
		" Forward fol. 2"	14,556	05
1857.				
April	16.	To cash, check, and postage	601	50
	18.	" "	468	81
May	6.	" "	122	75
	7.	" "	901	60
	8.	" "	1,025	00
	12.	" "	900	00
	14.	" "	30	00
	15.	" "	900	00
	16.	" "	300	00
	21.	" " protest	501	50
	27.	" "	300	00
	30.	" "	157	44
June	4.	" "	650	00
	4.	" chgs. pd. for ex. note due 27	220	00
	12.	" check	100	00
	16.	" "	1,634	22
	18.	" "	570	19
	20.	" "	1,020	00
	26.	" "	1,000	00
	27.	" "	500	00
	29.	" "	1,000	00

June	30.	To cash, check			101 60
July	3.	" "			1,000 00
	10.	" "			1,181 00
	11.	" "			50 00
	13.	" "			596 12
	20.	" "			1,000 00
	21.	" "			435 00
	27.	" chgs. pd. ex. note $5,500			220 00
	31.	" check			1,500 00
Aug.	3.	" "			1,056 31
	7.	" "			1,000 00
	8.	" "			1,191 37
	10.	" interest to bal. on our draft,	$273 21		
		Less discount	10 85		
					262 36
1857.					
Aug.	10.	To balance			3,263 68
	11.	To cash, check			775 00
	12.	" "			1,000 00
	14.	" "			44 00
	21.	" "			40 00
	26.	" "			700 00
	27.	" "			25 00
	28.	" "			30 00
	29.	" "			782 47
Sept.	3.	" "			40 00
		"Forward"			6,700 15
		"Concluded from fol. 2."			
1857.		"Forward"			17,363 96
May	22.	By cash, dis.			967 99
	29.	" "			967 99
June	4.	"			967 99
	11.	"			967 99
	15.	"			967 99
	19.	"			484 01
	22.	"			952 99
	26.	"			967 99
	30.	"			952 99
	30.	"			484 01
July	3.	"			967 99
	10.	"			952 99
	13.	"			580 80
	20.	"			952 99
	27.	"			952 99
	31.	"			476 51

Aug.	1.	By cash, dis.	952	99
	4.	"	952	99
	8.	"	952	99
		Balance	3,263	68
			37,052	82
1857.				
Aug.	12.	By cash, dis.	952	99
	17.	"	952	99
	20.	"	762	41
	25.	"	952	99
	31.	"	952	99
Sept.	7.	"	952	99
	12.	"	936	00
Jan.	22.	" ins. returned St. Louis Ins. Co.	96	00
March	17.	" " Peoria	50	63
		"Forward"	6,609	99
		"Continued from fol. 3.)		
		"Forward"	6,700	15

State of Illinois, County of St. Louis, *ss.*

On this 1st October, 1858, before me the undersigned, a notary public within and for the county aforesaid, personally came Edward P. Tesson and Lamar E. Suber, to me known, who being duly sworn according to law upon their oath, say that the statements contained in the foregoing amended answer are true to the best of their knowledge, information and belief.

EDW'D P. TESSON,
L. E. SUBER.

Sworn to and subscribed before me day and date last aforesaid, as witness my hand and official seal.

[SEAL.] R. A. BAKEWELL,
Notary Public.

State of Illinois, Woodford County, *ss.*

I, Peter Doty, clerk of the Circuit Court of Woodford County, do hereby certify that the foregoing is a true copy of the amended answer of the defendants, Edward P. Tesson, Abia Minor, Peter B. Garesche, and Lamar E. Suber, remaining on file in my office in the foregoing entitled cause.

Witness my hand and the seal of the Circuit Court of said county, affixed at Metamora this 25th day of February, A. D. 1859.

[SEAL.] PETER DOTY, Clerk.

(Deposition taken in Injunction Case.)

The deposition of Edward Menard and Peter B. Garische, of the city and county of St. Louis, State of Missouri, witnesses of lawful age, produced, sworn, and examined upon their corporal oaths, on the

tenth day of April, A. D. 1858, at my office, room No. 10, over the post office, in the city of St. Louis, State of Missouri, by me, Ed'd W. Shands, a commissioner duly appointed by a dedimus potestatum issued out of the clerk's office of the Circuit Court of the county of Woodford, and to me directed as such commissioner, for the examination of said Edward Menard and Peter B. Garische, witnesses in a certain suit now pending in said court, wherein Charles Boutcum and Paul Carry are plaintiffs, and Edw'd P. Tesson and others are defendants, in behalf of said complainants, as well upon the interrogatories of complainants as upon the interrogatories of defendant, attached to and inclosed with said commission and upon none others; the said Edward Menard, witness of lawful age, being first sworn to testify the whole truth of *of* his knowledge touching the matter in controversy between the said parties, plaintiffs and defendants, deposes and says in answer to interrogatories as follows:—

Interrogatory first. What is your name, occupation, and place of residence?

Answer. My name is Edward Menard. I reside at St. Louis City, Missouri. I have no occupation at present.

Int. 2d. Do you know the parties to this suit, and how long have you known them?

Answer. I know all the parties. I have known Mr. Tesson for 8 years; Mr. Danjen from his childhood; Mr. Suber for 8 years; Mr. Garische for three years; and Mr. Minor for 1½ years. I have known the plaintiffs, Boutcum and Carry, about 3 years.

Int. 3d. Do you know anything of a deed of trust executed by complainants to said Peter B. Garische to secure $5,500 to said Tessen and Danjen, and dated on or about March 12th, 1857? If so, state what you know of the origin and intention of the same.

Answer. I do know of the deed of trust described in the foregoing interrogatory. The origin of said deed was to secure Tesson and Danjen, defendants, in the payment of said sum of $5500; the same being money which said Tesson and Danjen had advanced to plaintiff. The intention of said deed of trust was, that in case Tesson and Danjen could not give a further extension of said money, they (T. & D.) should proceed to collect the same, as by the agreement entered into said deed of trust.

Int. 4th. Do you know anything of a confession of judgment by complainants to said Tesson and Danjen, on or about September 10th, 1857, made at Peoria, in this State, for $8000? If so, state what you know of the origin of the same; and if you have any knowledge of any arrangements between complainants and Tesson and Danjen, relative to the same, or to the giving of any security by complainants to Tesson and Danjen, about that time, please state fully.

Answer. I do know of a confession of a judgment for $8000, by Boutcum and Carrey to Tesson and Danjen, about the time referred to; and I believe said confession was made at Peoria, Illinois. The

origin of said confession was to secure said Tesson and Danjen in the sum of $8000, so as to cover all the indebtedness of plaintiffs B. and C. to said Tesson and Danjen, including the amount secured by the deed of trust; at least that was as Boutcum and myself understood it; and so also did Tesson and Danjen; when the judgment was satisfied the deed of trust was to have been released.

Int. 5th. What degree of intimacy had existed between complainants and Tesson and Danjen during the past year? Did complainants have any personal intercourse or interviews with said Tesson and Danjen during said period? If so, state whether said intercourse was most usually with Tesson or with Danjen, and in what language were their conversations held. State, also, what language was usually spoken by complainants, in their intercourse with you.

Answer. The intimacy between them, during the past year, was generally of a friendly nature, until up to about the 1st of August last, when Tesson and Danjen became distrustful of plaintiffs; said plaintiffs did have several personal interviews during said period with Tesson and Danjen; since Danjen's departure for Europe, the interviews have been with Mr. Tesson. What language was used at all the interviews I cannot say, as I was not present at all of them; but what conversations were had in my presence were carried on in the English and French languages. In my intercourse with plaintiffs, the French language was usually used.

Intrg. 6th. Did you ever agree with complainants to deposit any money to their credit in the banking-house of said Tesson and Danjen, at said St. Louis? If so, state what amount, and how much, if any, you so deposited, and at what time; state also whether said Tesson and Danjen participated, in any way, in that arrangement, and in what way.

Answer. I did agree with them to deposit with Tesson and Danjen the sum of four thousand dollars for their (B. and C.'s) credit, which agreement was carried out in the following manner. On the 14th of October, 1856, I advanced said plaintiffs the sum of fifteen hundred dollars, to pay their draft for that amount, falling due on that day, in the city of St. Louis, at the office of Tesson and Danjen; said draft is now in the possession of plaintiffs. And on the 2d day of March, 1857, I deposited with Tesson and Danjen, for the credit of plaintiffs, the sum of $2250; being the proceeds of my note endorsed by A. L. Danjen, at 12 months, and discounted at the rate of ten per cent. per annum, said plaintiffs agreeing to pay the interest; the only way in which Tesson and Danjen participated, was in discounting said note.

Intrg. 7th. At or about the time of the execution of said deed of trust, was anything said by said Tesson and Danjen to complainants, about a further advance of money by said Tesson and Danjen to complainants? If so, what was said, and by whom?

Answer. I cannot say. I do not know whether there was anything said about it or not.

Intrg. 8th. Do you know whether Tesson and Danjen had ever exhibited to complainants an account of their mutual dealings prior to the execution of said deed of trust, and since January 1st, 1857? If so, state when, where, by whom, to whom, and what was the balance due. Do you know the actual balance due by complainants to Tesson and Danjen? If so, state the same, and your means of knowledge.

Answer. I do know that Tesson and Danjen did render to said complainants (B. & C.), on the 1st or 2d of Jan'y, 1857, when B. & C.'s bank book, balanced as is usual among bankers, and at the same time returned to said B. & C. all their vouchers. The balance then to Tesson and Danjen, by said B. & C., at that time was between $700 and $800. The account was made out in St. Louis, and was received by Boutcum and Carrey, in Peoria, by express or through the post-office, I do not know which. I do know the actual amount due by Boutcum and Carrey to Tesson and Danjen. On the book account it is $2933, and the amount secured by deed of trust is $5500, making a total of $8433. My means of knowledge are that holding the power of attorney of Boutcum and Carrey, I have acted as their agent and attorney in fact, in transacting business for them, until December last, and I am familiar with their affairs, and know the condition of the account between them and Tesson and Danjen. The power of attorney, referred to above, is still in force, it never having been revoked.

Intrg. 9. Do you know when and where said deed of trust was drawn, and by whom; and when and where it was executed, and how the same was placed in the hands of complainants for execution? If so, state fully all that you know in relation thereto; and, also, whether complainants consulted any person in relation to its legal effects before executing the same? and if so, whom, and when and where, and what was done, and your means of knowledge. State fully all that you know in the premises.

Answer. The deed of trust was drawn up in St. Louis, by Garesche and Baknell, attorneys at law; which one of the firm drew it I do not know, of my own knowledge: said deed was placed in the hands of Boutcum and Carrey for execution by myself. I do not know if they consulted with any one, as to its legal effects, before executing. I do know that Boutcum and Carrey and myself read it before it was signed. After it was signed, it was sent to Metamora for record; and from Metamora it was brought to St. Louis by myself.

Intrg. 10th. If in answer to interrogatory 4 you answer affirmatively, state whether at the time said confession of judgment was proposed, anything was said of said deed of trust. If so, by whom, and what was said of the effect of the new security then proposed upon said deed of trust? Was any statement you there exhibited by Tesson and Danjen, the complainants? What was said of the charter and use to be made of the new security there proposed?

What was the amount to be secured by it? Was said amount to be additional to or inclusive of the sum previously secured by said deed of trust? Was there any settlement or attempted settlement of account between complainants and Tesson and Danjen, at the time of said confession of judgment? What inducements, if any, were held out to procure from complainants said deed of trust and confession of judgment respectively? Was any said by Tesson and Danjen, at the time when these securities were proposed respectively about their intention to insure the securities according to their terms? If so, state the exact language of the remarks as nearly as you can, whether made in French or English language; by whom made; when, where, and to whom made; and whether complainants were present? State what was said by Tesson and Danjen (and which of them) to complainants (and which of them) about said securities respectively, at the time when they were proposed, stating who were present at the time?

Answer. I do not know if anything was said in regard to deed of trust, excepting what I have heard from Boutcum and Suber. When Suber (def't) went to Farmville or Peoria, last September, I gave him a letter to Boutcum and Carrey, asking them to treat with him —Suber—as they would with Tesson and Danjen, as he (Suber) was fully authorized by Tesson and Danjen to act for them. What was said or done at that time I do not know of my own knowledge. All I know is what I have heard Boutcum and Carrey say. I thought that at the time the deed of trust was proposed, it was by Carrey (compl't), at the office of Tesson and Danjen; to whom proposed I cannot say, positively, but I think to Danjen first. I do not understand, in the above interrogatory, what is meant by "to insure the securities according to their terms." I suppose the intention was to ask if the securities would be enforced according to their terms. I never understood or heard anything to the contrary from any of the parties. I do not know of any inducement being held out to complainants to procure from them the deed of trust and judgment. Tesson and Danjen asked them (complainants) to execute the deed of trust, to secure them, T. & D.; the judgment, I am informed, and believe, was given voluntarily by complainants (B. & C.).

Intrg. 11th. Were any settlement of accounts ever made by Tesson and Danjen with complainants since January 1st, 1857? If so, when, and in what manner was said statement made to Peter B. Garesche?

Answer. I do not know if there ever has been a final settlement between the parties. I know that statements have been made and passed between them at several times, all of which dates I cannot now recollect. During the time I was with Boutcum and Carrey, the statements, as furnished by Tesson and Danjen, coincided with the accounts of Boutcum and Carrey. At the date of the execution of the deed of trust, complainants were indebted to Tesson and Danjen $1496 on book account. Also, money borrowed on note,

$2500; and also, Tesson and Danjen had obliged themselves to pay for them, during the month of March, about $1500 more.

Intrg. 12th. Do you know anything of a judgment recovered in the Circuit Court of Peoria County, in the State of Illinois, on or about the 21st November, 1857, for $5000, wherein one Peter B. Garesche is plaintiff, and said Tesson is defendant? If so, state whether or not you are said plaintiff, and whether or not you are also the trustee in the deed of trust mentioned in interrogatory 3d? What was the consideration of said judgment? What was the consideration of the note upon which said judgment purports to have been rendered? When had said consideration been received by said Tesson and Danjen? What was the previous condition of said Tesson and Danjen, and of their banking-house, when said note was given? Was said banking-house open or suspended? If suspended, how long had it been suspended? When was said note executed? When was it delivered to you? In whose custody did said note remain after its execution? Was it ever in your custody? If so, how long? When and for what purpose? Who sent or brought said note to Peoria? Who employed the attorneys, by whom said judgment was recovered? Why was said note sent to Peoria for collection? At whose suggestion? Who proposed the confession of a judgment? Who selected the property upon which execution, issued on that judgment, was levied? What was done with said levy? Was said property sold under said execution? If so, to whom and for what sum? Could the amount of said note have been collected from said Tesson and Danjen, in St. Louis, since the maturity of the same? If so, in what way? Why was the same sent to Peoria? What interest have you now in judgment, or in the sale made to satisfy the same? Who owns the same now? What is the value of the property so sold?

Answer. I know nothing, of my own knowledge, in regard to said judgment, or of the matter inquired about in this interrogatory. I suppose the interrogatory is directed particularly to Mr. P. B. Garesche.

Cross-Interrogatories to said Edward Menard, on behalf of complainants.

Cross-Intg. 1st. How much are the defendants indebted to the complainants over and above the sum of $8000, for which they confessed judgment in the Peoria County Court? State fully, and your means of knowledge.

Answer. About eight thousand five hundred dollars is the present indebtedness of Boutcum and Carrey to said Tesson and Danjen, over and above the sum of eight thousand dollars, for which they confessed judgment. I have already stated my means of knowledge in answer to direct interrogatory.

Cross-Int'y 2d. What, if anything, do you know further of benefit to the complainants?

Answer. I know of nothing further of benefit to either party.

(Signed) EDWARD MENARD.

Sworn to and subscribed before me this 10th day of April, A. D. 1858. Witness my hand and seal.

(Signed) C. W. SHOURDS. [SEAL.]

A true copy. Attest, E. W. SHOURDS.

The said Peter B. Garishe being also first duly sworn by me as a witness, in the said cause, previous to the commencement of his examination, to testify the truth as well on part of the complainants as of defendants, so far as he should be interrogated upon, and says as follows:—

Inter'y 1st. What is your name, occupation, and residence?

Answer. Peter B. Garische. I am a lawyer, and reside in St. Louis, Missouri.

Inter'y 2d. Do you know the parties to this suit? and how long have you known them?

Answer. I have a slight acquaintance with plaintiffs. I know all the defendants, except Mr. Minor.

Inter'y 3d. Do you know anything of a deed of trust executed by complainants to said Peter B. Garische, to secure $5500 to said Tesson and Danjen, and dated on or about March 12, 1857? If so, state what you know of the origin and intention of the same.

Answer. I drew up, at the instance of Mr. Tesson, a deed of trust which answers the description as stated in the foregoing interrogatory, or rather that such a one was drawn up in my office, I think by my partner. I know nothing particularly about it except as I have heard from E. P. Tesson.

Inter'y 4th. Do you know anything of a confession of judgment by complainants to said Tesson and Danjen on or about September 10th, 1857, made at Peoria, in this State, for $8000? If so, state what you know of the origin of the same, and if you have knowledge of any arrangements between complainants and Tesson and Danjen relative to the same, or to the giving of any security by complainants to Tesson and Danjen? about what time? please state fully.

Answer. I know nothing of the confession of judgment of my own knowledge, and know nothing as to any arrangement concerning it.

Inter'y 5th. What degree of intimacy has existed between complainants and Tesson and Danjen during the past year? Did complainants have any personal intercourse or interview with said Tesson and Danjen during said period? If so, state whether said interview was most usually with Tesson or with Danjen, and in what language were their conversations held; state also, what language was usually spoken by complainants in their intercourse with you.

Answer. I do not know much about the intimacy between said parties, except so far as I have heard from Mr. Tesson, who has stated to me that he formerly thought well of Carrey; but never had any favorable opinion of Boutcum. I never was present at any in-

terview between Tesson and Danjen (or other defendants) and complainants, and don't know of my own knowledge, of any being had.

Inter'y 6th. Did you ever agree with complainants to deposit any money to their credit in the banking house of said Tesson and Danjen at said St. Louis? If so, state what amount, and how much, if any you so deposited, and at what time; state also, whether said Tesson and Danjen participated in any way in that arrangement, and in what way.

Answer. I never made any agreement of any nature or kind whatsoever, to which plaintiffs were parties or in anywise interested.

Inter'y 7th. At or about the time of the execution of said deed of trust, was anything said by said Tesson and Danjen to complainants about a further advance of money by said Tesson and Danjen to complainants? If so, what was said? where? and by whom?

Answer. I was not present at the execution of said deed of trust, and know of nothing being said about a further advance of money by said Tesson and Danjen to complainants.

Inter'y 8th. Do you know whether Tesson and Danjen had ever exhibited to complainants an account of their mutual dealings prior to the execution of said deed of trust, and since January 1st, 1857? If so, state when, where, by whom, to whom, and what was the balance due. Do you know the actual balance due by complainants to Tesson and Danjen? If so, state the same and your means of knowledge.

Answer. I have no knowledge on the subject, except as derived from Tesson, who has told me that he frequently accounted with complainants. I don't know the actual balance due to Tesson and Danjen.

Inter'y 9th. Do you know when and where said deed of trust was drawn up? and by whom, and where it was executed? and how the same was placed in the hands of complainants for execution? If so, state fully all that you know in relation to its legal effect before executing the same; and if so, whom, and when, and where, and what was done, and your means of knowledge; state fully all that you know in the premises.

Answer. I have stated how and by whom I believe the deed of trust was drawn; but I know nothing of its execution. I believe Tesson consulted my partner respecting its legal effect; they may have consulted me, but I have no recollection as to such consultation.

Inter'y 10th. If, in answer to interrogatory 4, you answer affirmatively, state whether at the time said confession of judgment was proposed, anything was said of said deed of trust; if so, by whom, and what was said of the effect of the new security thus proposed upon said deed of trust? Was any statement you drew in them exhibited by Tesson and Danjen, the complainants? What was said of the character, and the use to be made of the new security then proposed? What was the amount to be secured by it? Was said amount to be

additional to or inclusive of the sum previously secured by said deed of trust? Was there any settlement or attempted settlement of account between complainants and Tesson and Danjen at the time of said confession of judgment? What inducements, if any, were held out to procure from complainants said deed of trust and confession of judgment respectively? Was any said by Tesson and Danjen at the time when these securities were proposed respectively about their intention to insure the securities according to their terms? If so, state the exact language of the remarks as nearly as you can, whether made in French or English; by whom made; when, where, to whom made; and whether complainants were present; state what was said by Tesson and Danjen (and which of them) to complainants (and which of them) about said securities respectively at the time when they were proposed, stating who were present at the time.

Answer. I have not answered interrogatory affirmatively, and know nothing about the confession of judgment, &c., inquired about in this interrogatory.

Inter'y 11th. Were any settlement of accounts ever made by Tesson and Danjen with complainants since January 1st, 1857? If so, when and in what manner was said statement made to Peter B. Garesche?

Answer. I know nothing of any settlement of account between complainants and Tesson and Danjen, except as stated in my answer to interrogatory eighth.

Inter'y 12th. Do you know anything of a judgment recovered in the Circuit Court of Peoria County, in the State of Illinois, on or about the 21st November, 1857, for $5000, wherein in Peter B. Garische as plaintiff, and said Tesson is defendant? If so, state whether or not you are also trustee in the deed of trust mentioned in interrogatory 3d? What was the consideration of said judgment? What was the consideration of the note upon which said judgment purports to have been rendered? When had said consideration been received by said Tesson and Danjen? What was the previous condition of said Tesson and Danjen, and of their banking house, when said note was given? Was said banking house open or suspended? If suspended, how long had it been suspended? When was said note executed? When was it delivered to you? In whose custody did said note remain after its execution? Was it ever in your custody? If so, how long, when, and for what purpose? Who sent or brought said note to Peoria? Who employed the attorneys, by whom judgment was received? Why was said note sent to Peoria for collection? at whose suggestion? Who proposed the confession of judgment? Who selected the property upon which execution issued on that judgment was levied? What was done with said levy? Was said property sold under said execution? If so, to whom and for what sum? Could the amount of said note have been collected from said Tesson and Danjen in St. Louis since the maturity of the same?

If so, in what way? and why was the same sent to Peoria? What interest now have you in since judgment or in the sale made, to satisfy the same? Who owns the same now? What is the value of the property sold?

Answer. As I had stated in my answer to interrogatory 4th, I know nothing respecting the confession of judgment, and can only add, that I know nothing of the matter inquired about in this interrogatory.

(Interrogatories on behalf of the complainant to Peter B. Garische.)

Inter'y 1st. How much are the defendants indebted to the complainants over and above the sum of $8000, for which they confessed judgment in the Peoria County Court? State fully, and your means of knowledge.

Answer. I answer as I did to 8th interrogatory. I don't know the indebtedness. Mr. Tesson has told me, that he and complainants had several settlements of accounts at various times. An account was once shown to me, and represented by Mr. Tesson as being in the handwriting of one of the complainants.

Inter'y 2d. What, if anything, do you know further of benefit to the complainants?

Answer. Tesson and Danjen owed me a very considerable balance on account of deposits; when they suspended in October, 1857, the balance was over $15,000. They gave me many different kind of securities. They executed one note for $5000 00, which they secured on property here; and another for like sum, on which they directed me to attach, at Peoria, certain property or interest in property which they had there; this last note I held in trust for other parties, having every confidence in them, and knowing their desire to hold me fully protected from loss. I sent the note up to their own attorneys to take such proceedings as would be proper. Mr. Suber, as our mutual agent, took charge of the papers and went up to Peoria. I know very little as to what has been done, but am quite sure all has been well done. I expect to be paid ultimately every cent by Messrs. Tesson and Danjen, whether my securities prove sufficient or not. Tesson and Danjen had closed their banking house, when the note referred to was given to me; it remained in my custody until sent up by Mr. Suber (perhaps Mr. Bakewell, my partner, who, I believe, accompanied Mr. Suber on that occasion, but went up on general business for Messrs. Tesson and Danjen). I don't remember the date of the note, for it was a very short time in my custody, having been at once sent up to Peoria as above stated. Messrs. Tesson and Danjen agreed with me to bear all the expenses in any proceedings I should institute on the note. Mr. Tesson requested me to bring suit on the note. Mr. Bakewell and Mr. Suber, or one of them, took it up and instituted the necessary proceedings at Peoria, and there employed counsel and these gentlemen (among them) directed all the proceedings. I know nothing of what was done as

stated above. I expect to be paid by Messrs. Tesson and Danjen, without having recourse to any securities placed in my hands by them, and have therefore interested myself but little in the matter. I consider my interest in the judgment to be rather that of a trustee than otherwise. I am the trustee in the deed mentioned in *mentioned in* interrogatory four, but am not positive, and cannot say positively, without seeing the deed, if a Peter B. Garische therein is named as trustee. I am doubtless the man.

(Signed) P. B. GARISCHE.

Sworn to and subscribed before me this 10th day of April, A. D. 1858. Witness my hand and seal.

(Signed) E. W. SHOURDS, [SEAL.]

A true copy. Commissioner.

Attest: E. W. SHOURDS.

State of Illinois, Woodford County, *ss.*

I, Peter Doty, Clerk of the Circuit Court of Woodford County, do hereby certify that the foregoing are true copies of the depositions of Edward Menard and Peter B. Garesche, remaining on file in my office, taken in the foregoing entitled cause.

Witness my hand and the seal of the Circuit Court of said county this 25th day of February, A. D. 1859.

[SEAL.] PETER DOTY, Clerk.

(Order dissolving Injunction.)

In the Circuit Court of Woodford County.

CHARLES BOUTCUM, PAUL CARREY,

vs.

EDWARD P. TESSON, ABIA MINOR, PETER B. GARESCHE, LAMAR E. SUBER.

In Chancery.

This day this cause came on to be heard upon the motion hereinbefore entered to dissolve the injunction issued in said cause, and the same was argued by counsel, and the court having examined the bill, answers, exhibits, affidavits, and evidence on file in said cause, doth order, adjudge and decree that the said injunction be dissolved.

Oct. 8, 1858. J. HARRIOTT.

(Order dismissing Bill.)

CHARLES BOUTCUM, PAUL CARREY,

vs.

EDWARD P. TESSON, ABIA MINOR, PETER B. GARESCHE, LAMAR E. SUBER.

For Injunction.

This day came the complainants by their solicitor, and upon their motion it is ordered, adjudged, and decreed that the complainants' bill be dismissed without prejudice. Oct. 8th, A. D. 1858.

The depositions on behalf of the defendants are in the words and figures following, to wit:—

Circuit Court United States, Northern District of Illinois.

EDWARD P. TESSON
vs.
CHRISTIAN FARRIS, PETER FARRIS.

The following depositions were taken in the above entitled cause, on the 22d, 24th, and 25th days of February, A. D. 1859, by agreement of counsel in said case, Julius Manning for defendants, and Norman H. Purple, counsel for plaintiffs, who were present, and waived all want of notice and time in the taking thereof.

Frederick Heinerichs, being duly cautioned and examined and sworn to testify the truth and nothing but the truth, says:—

Deposition of Frederick Heinerichs.

Quest. 1st. Do you know the parties to this suit?

Ans. Yes, I do. I know the personal property of Boutcum and Carrey levied upon by the sheriff of Woodford County, Illinois, on or about the 23d day of November, A. D. 1857; said levy was on an execution in favor of Tesson and Danjen against said Boutcum and Carrey, issued from the Circuit Court of Peoria County. I know the property levied upon; the value was three thousand five hundred and eighteen dollars; the property consisted of about one hundred

bushels of malt, value	$125 00
180 bushels of wheat,	81 00
250 bushels corn,	60 00
15 bushels of rye,	9 00
34 empty whiskey barrels,	34 00
1500 barrel staves,	
1 set of cooper's tools,	7 00
1 set of blacksmith's tools ($36 00),	36 00
1 Silas C. Herring manufactory safe,	100 00
1 clock,	8 00
1 cow,	21 00
200 bushels stone coal	22 00
30 head of oxen,	975 00
2 two-horse wagons,	80 00
4 ox wagons,	296 00
1 gray stallion horse,	265 00
1 gray mare *mare*,	130 00
2 sorrel horses,	160 00
1 cream colored horse,	80 00
1 black mare *mare*,	25 00
100 empty grain sacks,	10 00
Stock of merchandise, wares, &c., in storehouse occupied by Boutcum and Carrey,	1000 00

I was present when the delivery bond in said case was executed,

which bond is hereto attached as an exhibit and marked "A;" said bond was executed by said Boutcum and Carrey and Christian Farris, one of the defendants in this suit, bearing date the 23d day of November, A. D. 1857. All the goods described in said delivery bond were offered to be delivered to A. Minor, sheriff of said Woodford County, on the fifteenth day of December, A. D. 1857, by said Christian Farris, at Farnisville, in said Woodford County; said goods were in the same condition at the time of the said offer as they were when levied upon by said sheriff, except what store goods that were sold in the meantime, which were about the value of two or three hundred dollars.

The reason that the goods were not sold at the time of the offer as aforesaid, was that the sheriff was enjoined from selling them, as the sheriff said when the sheriff came down to sell the goods, the coroner of said Woodford County served an injunction on him to stop the sale of the property, which was on the same day that the said offer of delivery was made.

Boutcum and Carrey always kept possession of said property until they disposed of it; the store goods that were in the store they sold to the Farrises, that they owed; they sold 13 head to Bloomington for beef; 2 oxen died, 1 butchered, the remaining 14 were given Potthoff, Hancock and Pfieffer in payment of a judgment against said Boutcum and Carrey. The whole property was disposed of by Boutcum and Carrey for the payment of their debts; all that Potthoff, Hancock and Pfieffer received was sold with the knowledge of Christian Farris; all of said property except that received by said Potthoff, Hancock and Pfieffer was sold before the injunction in this case was dissolved, and the property that they received was sold in two or three weeks after said injunction was dissolved.

F. HEINRICHS.

(Exhibit "A," referred to in the foregoing deposition.)

Know all men by these presents, that we, Charles Boutcum, Paul Carry, and Christian Forney, are held and firmly bound unto A. Minor, sheriff of Woodford County, Illinois, in the penal sum of sixteen thousand five hundred dollars, for the payment of which, well and truly be made, we bind ourselves, our administrators, executors, heirs, and assigns, firmly by these presents. Witness our hands and seals, Nov. 23d, 1857.

The condition of the above obligation is such, that whereas I have this day levied an execution in favor Tesson and Danjen, and against the above bounden Charles Boutcum and Paul Carry, for the sum of eight thousand dollars debt, and also the interest and cost thereon, which execution was issued from a confessed judgment given in Peoria on the 12th day of Sept., 1857, in vacation, which execution I have levied on the following lands, goods, and chattels, belonging to said Boutcum and Carry, to wit:—

And about 100 bushels malt, 180 bush. wheat, 280 bushels corn,

15 bushels rye, 34 empty whiskey barrels, 1,500 barrel staves, 1 set cooper's tools, one set blacksmith's tools, one of Silas C. Herring's iron safes, one clock, one cow, 200 bushels stone coal, thirty head of oxen, two two-horse wagons, four ox wagons, one gray stallion horse, one gray mare, ten sorrel horses, one cream-colored horse, one black mare, and also the entire stock of merchandise, wares, &c., in the storehouse now occupied by the said Boutcum and Carry.

Now the said Boutcum and Carry, being desirous of retaining possession of said goods and chattels, have offered to the said sheriff of Woodford Co. Christian Forney as security that said goods and chattels shall well and truly be delivered to the said sheriff in good condition, and in their present condition, on the 15th day of December, A. D. 1857, at Forneyville, in said county, so that the said goods and chattels, lands and tenements, may be sold by said sheriff, if no other satisfactory arrangement made by the parties.

Witness our hands and seals, this 23d day of Nov., 1857.

BOUTCUM AND CARRY. [SEAL.]

Taken and approved by me, this 23d day of Nov., 1857.

A. MINOR, Shff. W. C.

George H. Stone, being first duly examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, says:—

(Deposition of George H. Stone.)

Quest. 1st. What is your name, age, occupation, and place of residence?

Ans. My name is George H. Stone; age is 27 years; residence in the city of Peoria, Illinois; my occupation is that of an attorney at law, and I am acquainted with the parties to this suit.

Quest. 2d. Were you one of the attorneys in the case of Charles Boutcum, Paul Carry *vs.* Edward P. Tesson, Antoine Danjen, Lamar E. Suber, Peter B. Garische, and Abia Minor, commenced in the Circuit Court of Peoria County, Illinois, on the chancery side of said court, returnable to the March term, A. D. 1858, of said court?

Ans. I was one of the attorneys of the complainants in the original suit above mentioned.

Quest. State whether or not there was an injunction granted in said cause.

Ans. There was.

Quest. Was there any motion on the part of said defendants to dissolve the injunction? If so, when was it made?

Ans. There was a motion made for that purpose, by Judge Purple, at the November term of said court, 1857, within a short time after said injunction was ordered.

Quest. What notice did you receive of said motion, and the grounds thereof, from said Purple?

Ans. Judge Purple gave notice in open court that he would make

a motion to dissolve the said injunction. I then asked him upon what grounds the motion was based; he replied that it was on account of the insufficiency of the injunction bond filed in said case.

Quest. Was said notice given before the second injunction bond in said case was marked filed?

Ans. It was given before the second bond was written.

Quest. State whether the conversation as above was held with Judge Purple before the second bond was filed.

Ans. It was; it was shortly after the injunction was granted, and before the second bond was filed.

(Cross-examined.)

Quest. Did not said Purple also state that one reason for the dissolving said injunction that there was no equity shown upon the face of the bill, and more particularly that the bill did not show that the whole of the debt claimed by Tesson and Danjen was not due?

Ans. I think that there was some other reason stated by Judge Purple than the insufficiency of the said bond. I do not recollect what it was. My attention was more particularly called to that reason, because I had drawn up the bond.

Quest. Did you not then advise your clients that said bond was insufficient, and that they must procure a new bond to be filed, to comply with the law and the order of the court?

Ans. I believe that I told said Boutcum and Carry that the court would probably hold said bond to be insufficient, and that they would have to file another bond, provided that they could get leave of the court to do so.

Quest. Did they procure another bond to be signed and sent to you or your partner?

Ans. They did. I do not recollect how long after that it was, but it was not long.

Quest. Did you or your partner, Wm. F. Bryan, hand said bond to the clerk of the Circuit Court of Peoria County?

Ans. I presume one of us did; I don't remember which.

Quest. Did Christian or Peter Farris, or either of them, ever authorize you to make a proposition to Edward P. Tesson, for them to pay the debt of Boutcum and Carry to Tesson and Danjen, and how long after the dissolution of the injunction, and is the proposition marked "A," hereto attached, one that you made for them?

Ans. They requested me to arrange with said Tesson to buy his judgment against Boutcum and Carry, so as to give them sufficient time to make payment on and hold the property of Boutcum and Carry upon it, which property had been already levied upon. I do not recollect how long after the dissolution of the injunction it was, but it was only a short time; the said proposition is in my handwriting, and one that I made for them. I made this proposition, or one which I thought was the best that they could possibly do. After I had made this proposition they withdrew my authority, as they

said that they could not make the payments as there stated—the proposition was not accepted by said Tesson.

Quest. Was not the injunction dissolved at the October term of the Woodford County Circuit Court, A. D. 1858, upon a hearing before the Court, upon bill, answers, exhibits, evidence, and arguments of counsel, and then did not the complainants voluntarily dismiss their bill after the dissolution of said injunction?

Ans. The injunction was dissolved at the time stated in the above question, and the said bill was dismissed by the complainants without prejudice. I was not present at the hearing, but was when the injunction was dissolved. Henry Grose argued the cause for the complainants upon the hearing, as said Grose informed me.

Quest. Was there any evidence taken in the case except that taken by the complainants?

Ans. I cannot state positively; not to my knowledge.

GEO. H. STONE.

(Exhibit "A," referred to in the above deposition.)

Proposition of Peter and Christian Farris to settle the indebtedness of Boutcum and Carry to Tesson and Danjen.

They agree to assume the whole amount and pay as follows:—

¼	on the	1st of	April, 1859.
¼	"	"	Oct. "
⅜	"	"	April, 1860.
¼	"	"	Oct. "
⅛	"	"	Jan'y, 1861.

To be secured fully and in a satisfactory manner.

William F. Bryan being first duly examined, cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, says:—

Deposition of W. F. Bryan.

Quest. 1. What is your name, age, place of residence, and occupation, and are you acquainted with the parties to this suit?

Ans. My name is William F. Bryan; my age is forty years; place of residence is in the city of Peoria, State of Illinois; occupation that of an attorney at law. I am acquainted with the defendants in this suit, but not with the plaintiffs.

Quest. 2. Were you one of the attorneys and solicitors for the complainants in the cause of Charles Boutcum and Paul Carry *vs.* Edward Tesson, Antoine L. Danjen, Lamar E. Suber, and Peter B. Garesche, impleaded with Abia Minor, commenced on the chancery side of the Circuit Court of Peoria County, and State of Illinois, and made returnable to the March term, A. D. 1857, of said court?

Ans. I was one of the said attorneys and solicitors; Geo. H. Stone and myself were the only attorneys and solicitors in the cause at that time.

Quest. Was there an injunction issued in the last mentioned cause?

Ans. There was an injunction issued upon a bill drawn by myself on the twelfth day of December, 1857, as I recollect.

Quest. Was there at the time of the issuing of said injunction, an injunction bond executed and filed in the said cause in which said injunction was issued, and if so, who were the securities in said bond?

Ans. There was an injunction bond executed, and, as I understood, filed in the cause by Mr. Stone, my partner; the said bond was drawn up by said Stone; the securities were Christian and Peter Farris; the bond was shown to me bearing date December 12th, A. D. 1857, the penalty of which being $17,000, is the bond referred to by me; said bond is marked filed December 12th, 1857, by E. P. Sloan, clerk (the original of which bond the plaintiff agrees to produce upon the trial of this cause).

Quest. Was there any other injunction signed and sealed in the said chancery cause? if so, where was it actually signed and sealed?

Ans. There was. I have no distinct knowledge of the time when said bond was signed.

Quest. What do you know, if anything, of the time when it was or was not signed and sealed?

Ans. I know that it was not signed and sealed before the issuing of the injunction.

Quest. Do you know about what time said bond was signed and sealed? if so, state what you do know about it.

Ans. I can only answer this question from the circumstances under which said bond was drawn up, signed, and sealed, after the injunction had issued. I was informed by my partner, Mr. Stone, that a motion had been made by Mr. Purple, the counsel for the defendants in the chancery cause, to dissolve said injunction on account of insufficiency of the *the* bond on file at that time; upon going into court soon after, whether on the same or not I do not recollect, Judge Powell informed me that such a motion had been made. I then examined the bond filed and saw it for the first time, and thinking it defective or not, in accordance with the order of the court, I determined to get a new bond. I then drew up a bond in accordance with my opinion of the requirements of the order of the court granting said injunction, caused it to be copied by some one in my office, and it was sent over to Woodford County, where all of the parties *the parties* who signed and sealed the bond resided, to be signed and sealed by them and returned; that bond was returned to me signed and sealed by the same parties who had signed and sealed the first bond; the date of the second bond was the same as the date of the first bond; the reason of this was that I intended to move in court for time to file it as a substitute for the first bond, or as an amended bond; the penalty I think was the same as that in the first

bond (the plaintiff admits that this is the same bond upon which this suit is brought).

Ques. Was the second bond, mentioned by you, ever filed in said chancery suit? and, if so, how did it come to be filed, and for what purpose?

Ans. I have no recollection whether that second bond was marked filed or not. I handed it to the clerk of said court some time after I received it in connection, I think, with an affidavit which I then made stating the circumstances under which the first bond had been executed; this affidavit either contained a motion by complainants for leave to file said second bond as an amended bond, or was designed by me, in connection with said amended bond, as the basis of a such motion which I intended to make when the proper time came. I did not think it proper to ask for leave to file said amended bond, or to make any motion in said cause at that time, being the November term, A. D. 1857, of said Circuit Court, for the reason that summons in said chancery cause being returnable to the March term, A. D. 1858, I did not consider said cause as pending at said November term, 1857, in said court for any purpose whatever, intending to resist the motion made by defendants to dissolve said injunction during said November term, A. D. 1857, on the ground that the court had no jurisdiction over the matter at that term. I did not wish to prejudice my position, my making any motion in the case. Whether the clerk marked the paper that I handed to him filed or not, I do not now remember, or whether I requested him to do so or not, I do not remember—probably I did. I have no recollection of the date when this done; it was during the November term, as I think; it was some time after the motion was made to dissolve.

Quest. Did you ever make a motion for leave to file said second injunction bond? if so, when and where?

Ans. After the adjournment of the November term, 1857, of said court, I received a written notice purporting to be signed by Purple and Pratt, the attorneys for the defendants in the chancery suit, that a motion would be made by them before the judge of said Circuit Court at his chambers on the seventh day of January, A. D. 1858, as I now recollect, to dissolve said injunction. I appeared at the time, and about that time or soon after I made a cross motion before said judge at his chambers to file an amended bond: this was the first motion that I had made to file an amended bond, or that the complainants had made in that case to file an amended bond, and said motion had reference to the second bond heretofore spoken of by me, and on which this suit is brought.

Quest. If said second bond was marked filed, what was it marked filed for?

Ans. If it was marked filed it was done for the purpose of being offered as a substitute for the first bond. I intended as of course to make a motion, when the proper time came, for leave to file it. I knew, of course, that we had no right to file it without leave of

court as a substitute, but I thought it proper to put it among the papers for the purpose of advising the opposite party and the court of our intention; that is the first bond on which the injunction issued was manifestly defective. I wished to disabuse the minds of the defendants and the court of all suspicion of any intention on the part of the complainants to obtain the said injunction by a trick or by passing upon the clerk a useless bond, and for that reason placed this second bond and the affidavit before mentioned among the papers.

Quest. Was said bond delivered to said clerk or any other person for any other purpose than stated by you in your answer?

Ans. It was not.

Ques. Was leave obtained of the judge of said court, or of any other court, to file said second bond as an injunction bond in said chancery suit; if not, why?

Ans. Neither said Circuit Court of Peoria County nor the judge of said court, nor the Circuit Court of Woodford County, during my connection with said cause, ever granted leave to file said amended bond. (It is agreed that no leave was granted to file any bond in said cause, except so far as the original order of court required a bond to be filed.) After the case was removed to Woodford County I appeared as counsel for the complainants, and urged before that court as I had before the judge of the Circuit Court of Peoria County, at chambers, my cross motion for leave to file said second bond as an amended bond, and introduced authorities from New York and other reports to show the right of complainants to file such bond as an amended bond under the circumstances. I had used the same authority in my argument before the judge of said Circuit Court of Peoria County, in support of said cross motion, on the same day and at the same time when the motion to file said amended bond was argued at said Woodford County, March term, A. D. 1858. I also objected to the jurisdiction of said court, and made a motion to file an amended bill, and said motions were argued together. The reason why said court did not grant said motion was, as I understood it, that it was resisted by said defendants; it was resisted by said defendants by their counsel.

(Cross-examination.)

Quest. Do you when the bill for the injunction in this case was first sworn to?

Ans. I do not; I believe that it was sworn to in the early part of the month of December; it was some time on or before the 12th day of December, A. D. 1857.

Quest. Was it not ten or twelve days before the application for the injunction?

Ans. I do not recollect; it may have been sworn to several days before; it probably was.

Quest. Was any notice given of the application?

Ans. No.

Quest. From whom did you receive the second bond that was filed?

Ans. I believe that it was Heinrichs or Boutcum.

Quest. Did you file the bond with the check?

Ans. I handed the bond to the clerk, as I believe, but I may have put it among the papers.

Quest. Did you request him to file it?

Ans. I cannot answer this positively; very probably I did.

Quest. If you did, did you state to him any of the reasons which you have before stated why you gave it to him or requested him to file it?

Ans. I have no recollection of telling the clerk anything about it.

Quest. If you did leave it with and request him to file it, was it done in the same manner that you are in the habit of delivering and requesting to be filed other papers in your usual course of practice as an attorney?

Ans. I have no positive recollection of the manner in which it was done; I suppose that I laid them before the clerk on his table, as I have been in the habit of doing with other papers for the purpose of being filed.

Quest. Did you send out to get this bond executed, and have it sent to you, to be used to prevent the dissolution of the injunction in the case of Boutcum and Carry *vs.* Tesson and Danjen and others?

Ans. Yes, I suppose that I did; I drew it up myself, and gave it to Boutcum and Heinrichs to have it executed, to be used as a substitute for the first bond.

Quest. Did you deliver it to the clerk of the Peoria County Circuit for the same purpose?

Ans. I delivered it as the basis or part of the motion for leave to file it as an amended one, which motion I did not see proper to make at that time, for the reasons given in my examination in chief.

Quest. Did you tell the clerk any of the reasons?

Ans. I think not; it is not at all likely.

Quest. Was the bond sent to you to be used in your discretion, to be filed or not to be filed?

Ans. It was.

Quest. When you made the motion for leave to file the amended bond before Judge Powell, where was it? Did you present the amended bond to him?

Ans. I suppose that the bond was at that time with the other papers in the case; I have no recollection of presenting any amended bond to him, unless it was among the papers in the case; I referred the judge to it, as being the bond which I asked leave to file as an amended bond.

Quest. Why did you ask leave to file a bond which was already filed, when no motion had been made to strike it from the files?

Ans. I thought that it was necessary to get leave of the court for that purpose.

Quest. Did you not file the bond on which this suit is brought with the clerk of the Circuit Court of Peoria County, for the purpose of preventing dissolution of the injunction in the case of Boutcum and Carry *vs.* Tesson and Danjen and others, before referred to, or was that one of the reasons that induced you to file it?

Ans. As before said, I have no distinct recollection of causing it to be filed, but my action in the matter, whatever it was, was certainly intended to prevent the dissolution of the injunction.

(Re-ex.)

Quest. In what way to *to* prevent the dissolution of the injunction?

Ans. By obtaining leave of the court to substitute it *nunc pro tunc* for the first bond.

(Re-cross ex.)

Quest. Did you not at any time, when I called up the motion to dissolve said injunction in the Circuit Court of Peoria County, at the November term of said court, 1857, insist as one of the reasons for its dissolution that no sufficient bond had been filed, as required by law, produce from the papers on file in the case this second bond on which this suit is brought, and insist that it was a good and sufficient bond, and that it was filed in the case for the purpose of obviating that particular reason for dissolving the injunction?

Ans. I think not; I was very particular about doing everything in the matter that would recognize the jurisdiction of the court at that time. I think that I alluded to the fact that there was a bond among the papers that would be considered good; I alluded to this in the way of argument, knowing that the bond was among the papers.

Quest. Did you not show the bond to me, and produce it in court?

Answer. I have no recollection of doing it.

Quest. Is it your legal opinion, that the Circuit Court of Peoria County, after a suit of chancery is commenced and pending in said court, while the process is returnable to a subsequent term than at which the court is in session, has no jurisdiction in term time to hear a motion to dissolve an injunction?

Answer. That was the legal opinion that I acted on at that time, and the court decided in my favor. I have not investigated the law since.

WM. F. BRYAN.

By agreement of counsel, the Hon. Elihu N. Powell, after being duly examined, cautioned, and sworn to testify to the truth, the whole truth, and nothing but the truth, says as follows, which was reduced to writing by himself, and accepted as such, to wit:

Elihu N. Powell, being duly cautioned and sworn to speak the truth, the whole truth, and nothing but the truth, upon his oath says: that at the November Term of the Circuit Court of Peoria County, A. D. 1857, and, as I now recollect, on the 12th day of

December, a bill was presented to me, as judge of the said court, by Bryan Stone, as solicitors, wherein Charles Boutcum and Paul Carrey were complainants, and Edward P. Tesson and others were defendants, to enjoin the collection of a judgment rendered in favor of the a portion of the defendants to said bill against the said complainants, in the said Circuit Court of Peoria County; that on the said 12th day of December, 1857, an order was made for an injunction upon the complainants entering into bond, with certain named persons as security, in the sum of sixteen thousand dollars, as my memory now serves me, and conditioned according to the statute in such made and provided.

During the said November Term, 1857, a motion was entered by the defendants to said bill, for a dissolution of said injunction, and one of the reasons assigned in said motion was, that no bond, as required by the order of the court, has been filed before the issuing of the injunction. That after the filing of said motion to dissolve, it was called up by the counsel of the defendants, and I decided that I could not entertain the motion against the will of the complainants at the said November Term, for the reason that the suit was to the March Term, 1858; and the motion to dissolve was not taken up and disposed of.

After the adjournment of the November Term, a notice was given by the counsel of the defendants to the counsel of complainants, that on, I think, the 7th day of January, 1858, that an application would be made to me at chambers for the dissolution of said injunction.

For some reasons, which I do not now recollect, nothing was done on the day fixed in the notice; but the motion was held over, and on the 12th day of January, 1858, William F. Bryan, of counsel for complainants, filed or presented to me exceptions to entertaining the motion to dissolve the injunction, at chambers, and also a cross motion, to file an amended bond.

I held the matter upon these several motions under advisement, until the 30th day of January, 1858, when a petition was presented to me, by and on behalf of the defendants to said bill, for a change of venue, and upon receiving said petition, I ordered the venue to be changed to Woodford County. I recollect looking at the bond filed with the clerk of the Peoria County Circuit Court, at or about the time the motion to dissolve was made, and found that the bond was not in accordance with the order of the court in granting the injunction, as it did not provide for the payment of the judgment enjoined, as the statute requires.

I recollect seeing amongst the papers another bond in the same case, but whether filed by the clerk I cannot now remember; all I can state, if there was such a bond, and my best recollection is that there was, I never gave any leave to the complainants to file it, to obviate the defect in the bond filed when the writ of injunction was issued.

The motion of the complainants to amend the bond was pending

before me, at chambers, at the time the petition for a change of venue was presented to me; after which I made no order, but the order to change the venue. At the time of making the order to change the venue, I directed the clerk of the court to file all the papers that were presented to me at chambers by both of the parties litigant.

E. N. POWELL.

State of Illinois, City and County of Peoria, *ss.*

I, George S. Blakeley, a notary public in and for the said city, county and state, do certify, that the foregoing depositions were taken as stated in the caption thereof, and at the time, and at the office of Norman H. Purple, in said city; the said depositions being reduced to writing by myself, except that of Hon. E. N. Powell, which, by consent of parties, was reduced to writing by himself; said witnesses being all duly sworn, and who signed their respective depositions. I further certify, that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof in any manner.

In witness whereof, I have hereunto set my hand and affixed my notarial, this 25th day of February, A. D. 1859.

[SEAL.] GEO. S. BLAKELEY, Notary Public.

Endorsed: Opened May 4, 1859, for defendant's attorney.

WM. H. BRADLEY, Clerk.

Depositions of witnesses taken at the city and county of Saint Louis, in the State of Missouri, before me, James B. Goff, a commissioner of deeds for the State of Illinois, resident in said city, in pursuance of the annexed commission, to be read in evidence in a certain cause now pending in the Circuit Court of the United States for the Northern District of Illinois, wherein Edward P. Tesson is plaintiff, and Christian Farris and Peter Farris defendants.

Robert Barth being duly sworn, deposes and says in answer to the several interrogatories, as follows, viz:—

Interrogatories on the part of Defendants.

1. Give the language used by Christian Farris in the several conversations testified to by you in your deposition heretofore taken in this cause, as having occurred between yourself and said Farris, and the times and places such conversations took place; also state who was present, and give the whole of each conversation.

Ans. I cannot give the exact language used by Mr. Farris in those conversations, as it has passed from my memory; he came to our store to make some arrangement with us in regard to the indebtedness of Boutcum and Carry due to us, and there was a long conversation in regard to it. He said in substance that he was anxious to make some arrangement in regard to the bond, which he and his brother had given for Boutcum and Carry; that if they had to pay the amount of the bond it would ruin them, and proposed to us that we

should in connection with Mr. Tesson take the distillery and release our claims. I went with him to the office of Mr. Tesson the same day that he first called at our store, and there we had together with Mr. Tesson another long conversation in regard to the matter of Boutcum and Carry's indebtedness, and the bond which the Farris' had given in the injunction case. He proposed to Mr. Tesson that he should take the distillery and release him and his brother from the bond, but I cannot relate the exact language in which he expressed himself. My impression is that the several conversations which I had with him all occurred within two or three days, but that there were several meetings both at my store and Mr. Tesson's office. I cannot tell in what month these conversations occurred, as I have forgotten the exact time; my impression is that it was in the fall of 1858. I proposed to him that he should take charge of the distillery himself and try to work it out, and supposed he was going to do so when he left, as he said he would try to make some arrangement up there where he lived. I think Mr. Heinrich was present at some of those conversations, but do not remember whether he was present at all of them, and do not remember whether any one else was present or not. A part of the conversations alluded to in my former depositions took place at my store, and a part at Mr. Tesson's office, but what particular facts took place at each, I do not remember.

2. Did not plaintiff admit, that the distillery built by Boutcum and Carrey was on the real estate bought by him, under his execution against them; that he had possession of said distillery and real estate? Do you not know that he is in possession of the same, as purchaser under said execution? and state how much money the building of said distillery and appurtenances cost; describe said distillery, and state its condition as to repairs, when sold to plaintiff or where you saw it, stating when you saw it?

Ans. I do not remember hearing plaintiff admit, in any of those conversations, that the distillery built by Boutcum and Carrey was on the real estate bought by him, under his execution against them, or that he had possession of said distillery; he is in possession of the same as purchaser under sale by execution, but I do not know what execution. I do not know how much the building of said distillery and appurtenances cost, and cannot describe the same, as I have never seen it.

3. Was not said Farris, when you saw him in Saint Louis, trying to make arrangements to run said distillery? was he not trying to make an arrangement with the plaintiff to advance money for that purpose, and with you, and others, when the plaintiff refused? Did he not state that he had possession of said distillery, by conveyance from said Boutcum and Carrey, to secure their indebtedness to him; and did he not negotiate with plaintiff, to compromise said judgment against Boutcum and Carrey, for the purpose of saving said distillery from sacrifice by a forced sale, under the execution in favor of

said plaintiff, and also to avoid the expense and trouble of a lawsuit upon said injunction bond?

Ans. I do not know that Farris, when I saw him in St. Louis, was trying to make arrangements to run said distillery, or that he was trying to make an arrangement with plaintiff to advance money for that purpose. I think he mentioned to me the subject of advancing money for that purpose, after I proposed to him that he should take charge of and run the distillery. I do not remember whether Farris mentioned that he had possession of said distillery, by conveyance from Boutcum and Carrey, to secure their indebtedness to him. As I understood the matter of their negotiation, it was for the purpose of securing the payment of plaintiff's claim out of this distillery property; so that plaintiff should not come upon him for anything; and he said that he would be willing to lose the amounts due him, some six thousand dollars, if Mr. Tesson and myself would take the property in satisfaction of our claims against Boutcum and Carrey.

4. Was Peter Farris present at any of the said conversations?

Ans. Only one of the Farrises was present, I do not know which it was.

5. Was not Frederick Heinrich present at said conversations?

Ans. I believe he was.

Interrogatories on the part of Plaintiff.

1. State whether or not the said Christian Farris, in any of the conversations you had with him, did or did not state that he was liable upon an injunction bond to pay the debt due from Boutcum and Carrey to Tesson and Danjen; or if he did not say so in so many words, what did he say? state as near as you can the substance of any conversation you may have had with him upon the subject.

Ans. I cannot repeat the precise words which Mr. Farris used in those conversations, but he stated in substance that he would have to pay plaintiff all of the debt of Boutcum and Carrey which he could not make out of the property in consequence of having signed the bond, and the whole tendency of this conversation in regard to the matter was such as to convey to my mind the idea that he considered himself responsible and liable on the bond.

2. State whether to your knowledge there were other and prior liens to said Tesson and Danjen's judgment which said Tesson was obliged to pay to perfect his title to the distillery property. If so, what were they, and what was their amount?

Ans. The firm of Angelrodt and Barth had a mortgage for some five or six thousand dollars, and there were mechanics' liens to the amount of between two and three thousand dollars, all of which were prior to the judgment of Tesson and Danjen. The sum due Angelrodt and Barth has not yet been paid, and I do not know whether the mechanics' liens have been paid or not. It is my impression that Mr. Tesson has purchased the mechanics' liens; he so informed me.

3. State whether or not said Tesson, since the purchase by him of the said distillery property, has offered to sell the same and all his interest therein; and if so, at what price?

Ans. I know that Mr. Tesson has offered the property for sale, but do not know what price he asked for it.

4. Did you know or not at the time you heard said Forney conversing in relation to Tesson and Danjen's debt due from Boutcum and Carrey, that two injunction bonds had been executed by said defendants, or did said Farris at any time say anything to you or in your hearing, about having executed two injunction bonds? and if so, what?

Ans. I did not know that said defendants had executed two injunction bonds, and do not remember hearing Farris say so.

5. Do you know anything more of benefit to either party?

Ans. I know nothing further which will, in my opinion, be of benefit to either party. ROBERT BARTH.

State of Missouri, City and County of St. Louis, *ss.*

I, James B. Goff, the aforesaid commissioner, hereby certify that on the 5th day of May, 1859, at the city aforesaid, the above named Robert Barth was by me duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories herein set forth, that I thereupon propounded to him said interrogatories in the order in which they are written, and took his answers thereto in writing as hereinbefore appeared, and that the same, when so reduced to writing, were by said deponent subscribed in my presence at the place aforesaid.

Witness my hand and official seal, this 16th day of May, 1859.

[SEAL.] JAMES B. GOFF, Com'r.

Lamar E. Suber, being duly sworn, deposes and says in an to the several interrogatories as follows, viz:—

Interrogatories on the part of Defendants.

1. At what time was said Christian Farris in Saint Louis, and where did the conversations you have testified to between him and said Tesson in your deposition heretofore taken in this cause take place? and who were present at such conversations, or either of them?

Ans. He was in Saint Louis between the eleventh and eighteenth of October, 1858; said conversations took place in the office of Tesson and Danjen, in Saint Louis, Mo. No one was present besides myself, Christian Farris, and Edward P. Tesson. Mr. Farris and Mr. Tesson were in the back office waiting for Mr. Barth, and when he came in, I went out. I refer to the first conversation alluded to in said deposition. The second conversation there spoken of occurred at the counter of Tesson and Danjen in St. Louis, about the 28th of October, 1858; at that time there were a number of persons present

with whom I was doing business, but they were strangers, and I do not remember who they were.

2. At the time of said conversations, was not said Christian Farris in possession of the distillery and mill formerly owned by Boutcum and Carrey, in Woodford County, Illinois, as purchased from said Boutcum and Carrey? and was it not then understood between said Tesson and Farris, that the execution issued upon the judgment in favor of said Tesson against said Boutcum and Carrey, had been levied upon said premises, and that said Tesson had a bill on the same to the amount of said judgment; and did not the said Farris make the offer of compromise mentioned by you for the reason that said property was liable for said debt, and was it not on account of the desire of said Farris to save the property that he visited said Tesson?

Ans. I do not know whether he had possession of said property at that time or not. I think the sheriff had possession of it at that time. It was understood between them that the execution issued upon said judgment against Boutcum and Carrey, had been levied on said premises, and that said Tesson had a lien on the same to the amount of said judgment; said Farris did not make said offer of compromise, for the reason that said property was liable for said debt; nor did he visit said Tesson on account of his desire to save said property; but, on the contrary, his sole desire and intention in making said offer, and visiting Mr. Tesson, was to save himself from liability on the bond which he and his brother had signed for Boutcum and Carrey, as far as I could learn his desires and intentions from his conversations.

3. Did not said Farris offer to said Tesson to pay said judgment against said Boutcum and Carrey, if Tesson would give him time enough, but could not pay any cash down? or what proposition did said Farris make to said Tesson? and was not such proposition made by way of compromise to save expense and trouble of a suit upon said injunction-bond?

Ans. Farris did not, within my knowledge, make any offer to Tesson to pay said judgment, if Tesson would give him time enough; the offer came from Tesson, who proposed to give him time if he would pay something in cash, and give additional security for the balance, subject to the approval of Judge Purple. Farris said he could not pay any cash. Farris made no proposition to Tesson that I know of, except that he said he was negotiating with parties here for money, and that if he succeeded he would pay the debt. His object seemed to me to be to get rid of his liability on the bond.

4. Did not said Farris endeavor to raise money for the purpose of carrying on said distillery, and did he not make a proposition to said Tesson, in substance, that if said Tesson would advance him money to carry on his said distillery, he would give Tesson security for the same, and also for the amount of said judgment against said Bout-

cum and Carrey, and also one-half of the profits of running of said distillery?

Ans. I do not know anything about those matters.

5. Was it not for the main purpose of preserving the said distillery property in his own possession, that said Farris made his repeated journeys to St. Louis?

Ans. His purpose, as far as I could understand it, from his actions and words, was to save himself from his liability on the bond. I could discover no other purpose in his visits to St. Louis.

6. What is the occupation of said Farris, is he a German and a farmer? and don't you know that he cannot read or write English?

Ans. Said Farris is a farmer, and I think he is a German. I do not know whether he can read or write English or not.

7. Please state in detail, and fully, the conversations between said Tesson and said Farris, at the times before testified to by you, and particularly the language used by said Farris in speaking of said bond, specifying time, place, and language of each conversation, and stating who was present?

Ans. Mr. Farris, after some conversations in regard to the bond which I cannot remember, distinctly said that he and his brother had given the bond because they had so much confidence in Boutcum and Carrey; that Boutcum and Carrey had always told them that they did not owe Tesson and Danjen one-half of the amount that they claimed; and that they would, in a short time, have received from France some fifty thousand dollars, and would with that money pay their debts, including what they owed Tesson and Danjen, and that Mr. Carrey had gone to France to get the money, and that by their representations, they had been induced to execute the bond for Boutcum and Carrey, and that they would never have signed the bond but for such representations. He further said that if Mr. Tesson enforced the bond it would ruin them. Mr. Tesson told Mr. Farris that it was not his intention to ruin him, and that he was willing to show him all the favor that he could, consistently with his duty to himself; that all he wanted was what was due him from Boutcum and Carrey, and that Boutcum and Carrey were great rascals, and he had no compassion for them. Mr. Tesson said he would extend the time so as to make it as long as he could for the Farris's, if they would pay a part of the debt in cash, and give such security for the balance as would meet the approval of Judge Purple. Mr. Farris replied that he was negotiating with some parties in St. Louis for money, and if he was successful, he would pay Tesson; but that he had no means to pay otherwise. This was the first conversation I heard, and is as nearly in the language of the parties as I can now remember. It occurred in the back office of the banking-house of Tesson and Danjen, in St. Louis, Missouri, between the eleventh and eighteenth of October, 1858, the exact day I cannot state. On the second conversation, which occurred about the 28th of October, 1858, at the counter of Tesson and Danjen, in St. Louis,

Mr. Farris said that there was some parties there who were ready to take charge of the distillery lately owned by Boutcum and Carrey, and carry on the same, and said that by that arrangement he should lose his claim against said Boutcum and Carrey, and said he would try first to induce the farmers in the neighborhood to make a joint stock concern of it, and thought he could make it pay Tesson and Danjen's claim, and other claims held by the farmers in his neighborhood, against Boutcum and Carrey. No one was present at these conversations except Farris, Tesson, and myself, and the strangers I have heretofore mentioned.

8. What were you doing at the time the said conversations took place?

Ans. At the time of the first conversation I had gone into the room to converse with Mr. Farris, and was doing nothing else; during the second conversation I was standing at the counter engaged in my ordinary duties.

9. Was said Peter Farris present at any of these conversations?

Ans. No.

10. State explicitly the proposition made by said Tesson to said Farris in relation to the payment of said judgment of Boutcum and Carrey, and the reply of said Farris thereto, and if said Tesson made no other proposition than to refer said Farris to Judge Purple? State if you know what the exact details of the propositions as made by said Purple were.

Ans. There was no other proposition made by Tesson to Farris, except that which I have mentioned in my last answer, viz., that Farris should pay part of the debt in cash, and give additional security for the balance, in which conditions he (Tesson) would give further time for the payment of the balance. Farris, as I said before, told Tesson he would do it, if he succeeded in his negotiations. I know of no proposition having been made by Judge Purple.

11. Did not the proposition of said Tesson, or of Judge Purple, for said Tesson require that Farris should pay a part of said Boutcum and Carrey's judgment in cash, and the remainder in equal sums payable in four, six, eight, ten, twelve, and fifteen months, with interest, to be secured by the joint notes of said Christian and Peter with power of attorney from them thereto attached, authorizing the attorney to confess judgment immediately with a release of all right of redemption from sale of all real estate and personal property under execution, and also all benefit of exemption law, or if the foregoing proposition was not made as above stated? State what the proposition was fully. And was not the security to be given by said Farris to be of the same character, so far as relates to the authority to confess judgment, and effect of sale under execution, and releasing of benefit of redemption and exemption laws in this instrument executed by Boutcum and Carrey to Tesson and Danjen, and upon which judgment was made, obtained?

Ans. I know of no such proposition being made by Mr. Tesson,

or Judge Purple, except that I heard Mr. Tesson say he had made such a one, and that Farris had refused to accept it. Before the injunction was issued, I, on the part of Mr. Tesson, made a similar proposition to Mr. Farris; this was, when the sheriff made his first levy on the property, but Mr. Farris did not accept it.

12. Have you not taken a very active interest in this matter, as well against Boutcum and Carrey as against Farris, from the beginning? Do you not feel very anxious that the plaintiff should recover? Has not the plaintiff promised you a commission, or a portion of the claim upon recovery of the same?

Ans. I have taken an active part in this matter, but feel no more anxiety about it than any other clerk would for his employer. The plaintiff has not promised me a commission, or a portion of the claim, upon recovery of the same, nor any other reward.

13. Is not the real estate, levied upon by the sheriff and afterwards sold by him to the plaintiff in and by virtue of the said execution issued on the judgment of said Tesson against said Boutcum and Carrey, the land upon which the steam distillery, built by Boutcum and Carrey, is situated? State whether said distillery is not new or nearly so; and when it was built, and what did it cost to build the same, so far as you know or according to the best of your information and belief; also, state whether the said plaintiff is not in possession of the same, and of all the real estate so levied upon by said sheriff, and sold to him and under said purchase at each sale. And has not plaintiff already disposed of some of the furniture of said distillery?

Ans. Said real estate levied on, is the same on which the distillery was built by Boutcum and Carrey; said distillery is about three years old, having been built about three years since. I only know its cost from Boutcum and Carrey, who told me it cost them over forty thousand dollars. Plaintiff is in possession of the ground on which said distillery lately stood; the building having been built a short time since, plaintiff has sold a few small articles belonging to the distillery to the amount of about two hundred dollars. The watchman, employed by plaintiff to take care of the building, found it necessary to sell those articles to keep the people from stealing them.

Inter'y 14. Was not Frederick Heinrich present at each of said conversations you heard between said plaintiff and said Christian Farris, or at some of them, and which?

Ans. He was never present at any conversation which I heard.

Interrogatories on the part of the Plaintiff.

Inter'y 1. State whether or not the said Christian Farris in any of the conversations you had with him, did or did not state that he was liable upon an injunction bond, to pay the debt due from Boutcum and Carrey to Tesson and Danjen? or, if he did not say so in so many words, what did he say? State, as near as you can, the

substance of any conversation you may have had with him upon the subject.

Ans. He had conversation directly with me about it.

2. State whether, to your knowledge, there were other and prior liens to said Tesson and Danjen's judgment, which said Tesson was obliged to pay, to perfect his title to the distillery property. If so, what were they, and what was the amount?

Ans. There was a prior mortgage or judgment for between five and six thousand dollars, and mechanics' liens amounting to between two and three thousand dollars. Plaintiff has paid the mechanics' liens, and assumed the mortgage, but has not paid it yet.

3. State whether or not said Tesson, since the purchase by him of the said distillery property, has offered to sell the same, and all his interest therein, and if so, at what price?

Ans. He has offered it for sale, but I do not know at what price.

4. Did you know or not, at the times you heard said Farris conversing in relation to Tesson and Danjen's debt, due from Boutcum and Carrey, that two injunction bonds had been executed by said defendants: or did said Farris, at any time, say anything to you, or in your hearing, about having executed two injunction bonds, and if so, what?

Ans. I did know that two injunction bonds had been executed by defendants. I saw them execute them.

5. Do you know anything more of benefit to either party?

Ans. I know that Christian Farris has always represented that he considered himself ruined by executing the bond.

L. E. SUBER.

State of Missouri, City and County of St. Louis, *ss.*

I, James B. Goff, the aforesaid commissioner, hereby certify, that on the 16th day of May, 1859, at the city aforesaid, the above named deponent was by me duly sworn, before he gave his testimony, to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories herein set forth; that I thereupon propounded to him said interrogatories in the order in which they are written, and took his answers thereto in writing, as hereinbefore appears; and that the same were so reduced to writing, and by said deponent subscribed, in my pres at the place aforesaid.

Witness my hand and official seal, this 16th day of May, 1859.

[SEAL.] JAMES B. GOFF, Com'r.

Alfred de Clausel, being duly sworn, deposes and says in answer to the several interrogatories, viz.:—

Interrogatories on the part of Defendants.

1. Give the language used by Christian Farris, in the several conversations testified to by you, in your deposition heretofore taken in this cause, as having occurred between yourself and the said Farris,

and the times and place such conversations took place; also state who was present, and give the whole of each conversation.

Ans. It would be impossible for me to relate the conversations between myself and Mr. Farris in his exact language, as I cannot remember the words he used at the time, except some expressions which impressed themselves upon my memory. Mr. Farris told me, he and his brother had executed the bond, and I distinctly remember his saying, he was "ruined" if the bond should be enforced. I advised him to call on Mr. Tesson, and try to make some arrangement with him. He said he would do so, and went away; and a short time afterwards, either the same, or the next day (I think it was the same day), for we boarded at the same house, and I saw him at almost every meal—he told me he had seen Mr. Tesson, and conversed with him about the matter, and was "much pleased" with what he said about it. He also said, that he considered himself and his brother liable to Tesson on the bond, and "feared they would be ruined by it;" for he had heard from Boutcum and Carrey, that Tesson was a man who would "take advantage, when he had the power;" but he was now of a different opinion. He expressly told me, that his object in going to see Mr. Tesson was, to make some arrangements to obtain time, so that he could pay the amount of the judgment against Boutcum and Carrey, or find a purchaser for the distillery, who would satisfy the claims against it. This is as near his language as I can remember it; and if not in the precise words used by him, contains the sense of what he said. We had a number of conversations on the subject, and they occurred on several different days; I think it all occurred in October, 1858; it was in the fall of 1858; some of them were held at my boarding-house and some at my room in St. Louis; and some at Mr. Farris' house in Farnisville, Illinois. After I went up to try to see the distillery, as stated in my former deposition, at nearly all these conversations, Mr. A. A. Van Wormer, of St. Louis, and F. Heinrich, of Farnisville, were present; said Van Wormer was also present at Farnisville, when our conversations occurred there; and during the conversations at Farnisville, Peter Farris was also present. The whole substance of the conversation at St. Louis was repeated at Farnisville, in the presence of Peter Farris. I do not remember that any one else was present, unless it was the eldest son of Mr. Farris, Mr. A. Duplissis, or F. Heinrich; but if they were, I have no recollection of the circumstance.

2. Did not plaintiff admit, that the distillery built by Boutcum and Carrey was on the real estate bought by him under his execution against them; that he had possession of said distillery and real estate? Do you not know that he is in possession of the same, as purchaser under said execution? and state how much money the building of said distillery and appurtenances cost; describe said distillery, and state its condition as to repairs when sold to plaintiff, or when you saw it, stating when you saw it.

Ans. I never had any conversation with plaintiff on that subject, and never heard him say or admit anything about it. I do not know whether he is in possession of said distillery or real estate, or not; nor do I know how much said distillery and appurtenances cost. The distillery was partly built of brick, and partly of wood. I do not know in what condition it was when it was sold; but when I saw it, it was in good repair, and the machinery in good order. I cannot state the exact date that I saw it, but it was in the fall of 1858, a few weeks after the conversations I have alluded to in St. Louis.

3. Was not said Farris when you saw him in Saint Louis, trying to make arrangement to run said distillery? Was he not trying to make an arrangement with the plaintiff to advance money for that purpose, and with you and others? When the plaintiff refused, did he not state that he had possession of said distillery by conveyance from said Boutcum and Carrey, to secure their indebtedness to him, and did he not negotiate with plaintiff to compromise said judgment against Boutcum and Carrey, for the purpose of saving said distillery from sacrifice by a forced sale under the execution in favor of said plaintiff, and also to avoid the expense and trouble of a lawsuit upon said injunction bond?

Ans. I do not know that he was trying to make arrangements to run the distillery, or to make an arrangement with plaintiff to advance money for that purpose, or with any one else; he did state to me that he had possession of the distillery by conveyance of Boutcum and Carry, but for what purpose he did not say. I do not know of any negotiation between Farris and Tesson for that purpose; all I know about it I learned from Farris himself, and according to his statement to me, he only went to beg Mr. Tesson as a favor to stay the execution and give him time to pay the debt, that he might not be ruined.

4. Was Peter Farris present at any of the said conversations?

Ans. Peter Farris was present at the conversations which took place at Farrisville.

5. Was not Frederick Heinrich present at such conversations?

Ans. He may have been present at one and perhaps more of the conversations which took place at Farnisville; he was present at all the conversations in St. Louis.

Interrogatories on the part of Plaintiff.

1. State whether or not the said Christian Farris in any of the conversations you had with him, did or did not state that he was liable upon an injunction bond, to pay the debt due from Boutcum and Carry, to Tesson and Danjen, or if he did not say so in so many words, what did he say? State as near as you can the substance of any conversation you may have had with him upon that subject.

Ans. He did so state several times. I have detailed his conversations on the subject as fully in my answers to the foregoing interrogatories as I can.

2. State whether to your knowledge there were other and prior

liens to said Tesson and Danjen's judgment, which said Tesson was obliged to pay to perfect his title to the distillery property. If so what were they, and what was their amounts?

Ans. I understood from Christian Farris that Angelrodt and Barth had a first mortgage on the distillery; as far as I can recollect it was about four thousand dollars. He also told me that there was also a mechanic's lien on the building for from fifteen to eighteen hundred dollars; I do not know whether Tesson has paid those liens or not.

3. State whether or not said Tesson since the purchase by him of the said distillery property, has offered to sell the same and all his interest therein, and if so, at what price?

Ans. I do not know that he ever offered it for sale.

4. Did you know or not at the time you heard said Farris conversing in relation to Tesson and Danjen's debt due from Boutcum and Carry, that two injunction bonds had been executed by said defendants, or did said Farris at any time say anything to you or in your hearing about having executed two injunction bonds; and if so, what?

Ans. I did not, nor did I ever hear Farris say anything about executing two bonds.

5. Do you anything more of benefit to either party?

Ans. I know nothing more about it.

A. DE CLAUSEL.

State of Missouri, City and County of St. Louis, *ss.*

I, James B. Goff, the aforesaid Commissioner, do hereby certify, that on the eighteenth day of May, 1859, at the city aforesaid, the above named deponent, Alfred de Clausel, was by me duly sworn before he gave his testimony, to certify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories herein set forth; that I thereupon propounded to him said interrogatories in the order in which they are written, and took his answers thereto in writing as hereinbefore appeared, and that the same when so reduced to writing were by said deponent subscribed in my presence at the place aforesaid.

In witness whereof I have hereunto set my hand, and affixed my official seal this 18th day of May, 1859.

[SEAL.] JAMES B. GOFF, Commissioner.

Endorsed: Opened for Mr. Merriman, and filed May 30th, A. D. 1859. WM. H. BRADLEY, Clerk.

(Woodford Record.)

The People of the State of Illinois, to the Sheriff of Peoria County, greeting:—

We command you to summon Edward P. Tesson, Antoine L. Danjen, Lamar E. Suber, and Peter B. Garesche (impleaded with

Abiah Minor), if they may be found in your county, to appear before our Circuit Court on the first day of the term thereof to be held at Peoria, within and for the said county of Peoria, on the first Monday of March next, then and there in our said court to answer the matters and things contained in a certain bill in equity exhibited against them in our said court on the chancery side thereof, by Charles Boutcum and Paul Carrey, and make return of this writ, with an endorsement of the time and manner of serving the same, on or before the first day of the term of the said court to be held as aforesaid.

Witness Enoch P. Sloan, clerk of our said court, and the seal thereof, at Peoria, this twelfth day of December, in the year of our Lord one thousand eight hundred and fifty-seven.

[SEAL.] ENOCH P. SLOAN, Clerk. P. H.

Endorsed on back: Boutcum et al. *vs.* Tesson et al. Summons in chancery.

The within named parties is not found in my county. Feb'y 19th, 1858. F. W. SMITH, Sheriff.

4 copies, $1 00
Ret., 10

1 10

BRYAN and STONE, for Compl'ts.

State of Illinois, Peoria County, *ss.*

The people of the State of Illinois, to Edward P. Tesson, Antoine L. Danjen, Peter B. Garesche, Lamar E. Suber, and Abia Minor, Sheriff the county of Woodford, State of Illinois, greeting:—

Whereas Charles Boutcum and Paul Carrey, complainants, have this day filed their bill in equity in the Circuit Court of said county, on the chancery side thereof, against you, the said Edward P. Tesson, Antoine L. Danjen, Peter B. Garesche, Lamar E. Suber, and Abia Minor, sheriff of Woodford County, Illinois, defendants, wherein among other things it is alleged that you, the said Tesson, Danjen and Suber, have wrongfully and fraudulently caused to be entered in our said Circuit Court a judgment against said Boutcum and Carrey, for the sum of eight thousand dollars, damages and costs, and that you, the said Danjen, Tesson, Suber and Minor, under and by virtue of an execution issued from our said court upon said judgment, has levied upon the following real and personal estate, the property of said Boutcum and Carrey, to wit, a tract or parcel of land lying and situated on the waters of the Mackinaw River, in the county of Woodford and State of Illinois, being ten and one-half acres, more or less, off the south end of a tract of land containing thirty-one and one-half acres, formerly owned by Joseph Majon, commencing at the southeast corner of said lot of ground, at a stake on the south bank of said river; thence west varying 80° 35½ poles to a stake 29

poles south of mill-dam; thence north forty-seven $\frac{32}{100}$ poles to a stake, it being the S. W. corner of a five acre lot owned by James Finley; thence east by said Finley's south line 35 one-half poles to a stake; thence south forty seven $\frac{32}{100}$ poles to the beginning; also the following described land in said county, commencing at the qr. section corner between sections 16 and 17; thence west 151 one-half poles to the Mackinaw River; thence by said river 3 chains to a stake; thence south 66° east 162 poles, being the S. E. corner N. E. qr. of the S. E. qr. of said section 16, town. 25 north, range 1 W.; thence north 80 poles to the beginning, containing forty acres, more or less; also the following goods and chattels, merchandise, to wit, thirty head of oxen, two two-horse wagons, four ox wagons, one gray stallion horse, one gray mare, two sorrel horses, one cream colored horse, one black mare, about one hundred bushels malt, about 180 bushels wheat, about 250 bushels corn, 15 bushels rye, 34 empty whiskey barrels, 1500 staves, one set cooper tools, one set blacksmith tools, one iron safe, one clock, one cow, about 200 bushels stone coal, about 100 sacks, the entire stock of merchandise, wares, &c., in the storehouse occupied by Boutcum and Carrey, in the town of Forneyville, taken as the property of Charles Boutcum and Paul Carrey to satisfy said execution; that you, the said Tesson, Danjen and Suber, have caused the same to be advertised by said Minor as said sheriff, to be sold at public sale by virtue of said levy, on the 15th day of December instant, and that you, the said sheriff, threaten to sell the same absolutely to the highest bidder for cash, at that time, without the privilege of redemption of said real estate, as provided by law; and that you, the said Tesson, Danjen, Suber, Garesche, also threaten wrongfully and fraudulently to sell said real and personal estate under and by virtue of a deed of trust fraudulently procured from said Boutcum and Carrey.

Now, therefore, we do hereby absolutely command and enjoin you, the said Edward P. Tesson, Antoine L. Dangen, Lamar E. Suber, Peter B. Garesche, Abia Minor, sheriff as aforesaid, you or either of your agents, servants, attorneys, deputy or deputies, successor or successors, that you and they do desist and refrain from selling or offering to sell any part of said property so levied upon by virtue of said execution or said levy, or from any further proceedings to enforce said execution or said levy, or from further proceedings with the levy under said execution, or from any further or other proceedings to collect said judgment or any part thereof, in any manner whatever, by any other execution or otherwise, or from any interference with any part of the property so levied on, and that you, the said Tesson, Danjen, Suber and Garesche, or either of you, your or either of your agents, attorneys, or assignee, or grantee or grantees or other person claiming through you or either of you, do absolutely desist and refrain from proceeding to sell or execute any conveyance of said property or any part thereof under and by virtue of said deed of trust, or for taking any steps to enforce the perform-

ance of said trust or any part thereof, until you and each of you shall appear to and fully answer the said complainants' bill, and the court make other order to the contrary. Hereof fail not, under the penalty of what the law directs.

Witness Enoch P. Sloan, Clerk of our said court, and the seal thereof at Peoria, this twelfth day of December, A. D. 1857.

[SEAL.] ENOCH P. SLOAN, Clerk. R. H.

To the Coroner of Woodford County, Illinois, to execute.

Endorsed on back:

BOUTCUM et al. vs. TESSON et al. } Injunction.

Duly served on the within defendant, Abia Minor, by reading a copy.

Summons,	50
Copy,	50
Mileage, &c.	80
Return,	10
	$1 90

Fees paid by Boutcum and Carrey December 15th, 1857.

B. W. KINDIG, Coroner of Woodford County, Ill.

BRYAN and STONE.

Reasons.

In the Circuit Court of Peoria County.

CHARLES BOUTCUM, PAUL CARREY, vs. EDWARD P. TESSON, ANTOINE L. DANJEN, ABIAH MINOR, LAMAR E. SUBER, PETER B. GARESCHE. } In Chancery.

The defendants, having filed their answer in this cause, enter a motion to dissolve the injunction herein for the reasons following:—

1st. Because no bond, as required by the order of court, has been filed before the issuing of the injunction.

2d. Because the bill has no equity on its face, and all the material allegations thereof are denied by the answer.

PURPLE for Def'ts.

I served a copy of this motion on Wm. F. Bryan this 29th Dec., 1857. N. H. PURPLE.

Sworn to before me this 29th Dec., 1857.

ENOCH P. SLOAN, Clerk.

Filed Dec 29th, 1857. ENOCH P. SLOAN, Clerk.

Motion to file New Bond.

CHARLES BOUTCUM et al.
vs.
EDWARD P. TESSON. } In Vacation, January 12th A. D. 1858.

Complainants except to the ruling of the court in this cause at chambers this day, that the court will entertain the motion of defendants to dissolve the injunction granted upon said bill, and now interpose a cross motion to file an amended bond nunc pro tunc.

BRYAN and STONE, for Complainants.

Endorsed:

BOUTCUM et al.
vs.
TESSON et al. } Motion to file New Bond.

Filed January 30, 1858. ENOCH P. SLOAN, Clerk.

In the Circuit Court of Peoria County.

CHARLES BOUTCUM, PAUL CARREY,
vs.
EDWARD P. TESSON, ANTOINE L. DANJEN, PETER B. GARESCHE, LAMAR E. SUBER, ABIAH MINOR. } In Chancery.

You are notified that on the 7th day of January, A. D. 1858, application will be made to the Hon. E. N. Powell at his chambers in the city of Peoria, for a dissolution of the injunction issued in the above entitled cause, for the following and various other reasons:—

1st. Because said injunction issued against law and the order of the court.

2d. Because no bond, as required by law and the order of the court, was filed previous to the issuing of said injunction.

3d. Because the answers and affidavits filed deny the entire equity as charged in the bill.

PURPLE and PRATT,
for Def'ts.

January 2d, 1858.

To complainants, or BRYAN and STONE, Esqs., their solicitors.

Endorsed:

BOUTCUM and CARREY
vs.
TESSON and DANJEN. } Notice to dissolve.

(Petition for Change of Venue.)

In the Circuit Court of Peoria County.

CHARLES BOUTCUM, PAUL CARREY,
vs.
EDWARD P. TESSON, ANTOINE L. DANJEN, ABIAH MINOR, PETER B. GARISCHE, and LAMAR E. SUBER. } In Chancery.

The petition of the defendants, Edward P. Tesson, Antoine L. Danjen, Abia Minor, Peter B. Garische, and Lamar E. Suber, represents that the Judge of the Circuit Court of Peoria County are prejudiced against the said petitioners, defendants in the above cause, so that they fear that they will not receive a fair trial in the court in which the said action is pending, and they, the said defendants, therefore pray a change of venue in this case to some county where the cause aforesaid complained of does not exist.

EDWARD P. TESSON,
ANTOINE L. DANJEN,
ABIAH MINOR,
PETER B. GARESCHE,
LAMAR E. SUBER,
By PURPLE and PRATT,
their Attorneys.

State of Illinois, Peoria County.

Lamar E. Suber being sworn, says, that the foregoing petition and the statements therein contained, are true to the best of his knowledge, information, and belief.

L. E. SUBER.

Sworn to before me, this 29th day of January, A. D. 1858.
N. H. PURPLE, Notary Public, Peoria City, Ill.

Endorsed:

CHARLES BOUTCUM, PAUL CARREY,
vs.
EDWARD P. TESSON and others.

Petition for change of venue. Filed Jan. 30, 1858.
ENOCH P. SLOAN, Cl'k.

Proceedings in chancery before the Circuit Court, at a term thereof began and held at the court-house in the city of Peoria, in and for the county of Peoria, State of Illinois, on the third Monday in the month of November, in the year of our Lord one thousand eight hundred and fifty-seven, it being the sixteenth day of said month. Present the Honorable Elisha N. Powell, Judge of the 16th Judicial Circuit of the State of Illinois, Francis W. Smith, Sheriff and Enoch P. Sloan, Clerk, to wit:—

Thursday, December 17th, A. D. 1857.

CHARLES BOUTCUM, PAUL CARREY,
vs.
EDWARD P. TESSON, ANTOINE L. DANJEN, LAMAR E. SUBER, ABIA MINOR, PETER B. GARISCHE.

For injunction.

This day come the defendants by N. H. Purple, their solicitor, and the complainants by Bryan, their solicitor, and the defendants moved the court to take up their motion to dissolve the injunction herein, which motion was resisted by complainants, and the court having heard the argument of the solicitor, does order that said motion be overruled; whereupon the defendants, by their solicitors, gave notice that they will apply for a change of venue of this cause.

Tuesday, December 29th, A. D. 1857.

Proceedings before the Honorable James Harriott, Judge of the 21st Judicial Circuit in the State of Illinois, by interchange with the Honorable Elisha N. Powell, Judge of the Sixteenth Judicial Circuit in said State, to wit:—

CHARLES BOUTCUM, PAUL CARREY,
vs.
EDWARD P. TESSON, ANTOINE L. DANJEN, LAMAR E. SUBER, ABIA MINOR, PETER B. GARISCHE.

For injunction.

This day come the defendants by Purple, their solicitor, and move the court to dissolve the injunction allowed herein.

Wednesday, December 30th, A. D. 1858.

CHARLES BOUTCUM, PAUL CARREY,
vs.
EDWARD P. TESSON, ANTOINE L. DANJEN, LAMAR E. SUBER, ABIA MINOR, PETER R. GARESCHE.

For injunction.

This day come the defendants by Purple their solicitor, and move the court to take up their motion to dissolve the injunction herein: whereupon the court refused to consider the matter.

Proceedings in vacation after the November term, A. D. 1857, of the Circuit Court in and for Peoria County, in the State of Illinois, in chancery, before the Honorable Elisha N. Powell, Judge of the 16th Judicial Circuit in the State of Illinois, at his chambers in the city of Peoria, to wit:—

(Order change venue.)

Saturday, January 30th, A. D. 1857.

CHARLES BOUTCUM, PAUL CARREY,

vs.

EDWARD P. TESSON, ANTOINE L. DANJEN, ABIA MINOR, PETER B. GARISCHE, and LAMAR E. SUBER.

Injunction.

This day in vacation come the said defendants by Purple and Pratt their solicitors, and present the petition of the said defendants for a change of venue on account that the judge of this court is prejudiced against said defendants, so that they fear that they will not receive a fair trial in the court in which the said action is pending. And it appearing that reasonable notice hath been given to the counsel for complainants of the intended application:

It is therefore ordered, that the venue in said cause be changed to the county of Woodford, and that the clerk file this order in the case, and make out a copy thereof, and a full transcript of the record and proceedings in said cause, and certify and transmit the same to the Circuit Court of Woodford County, together with all papers filed in the cause and appertaining or forming part of the record.

Peoria, January 30th, 1858.

State of Illinois, Peoria County, *ss.*

I, Enoch P. Sloan, Clerk of the Circuit Court in and for said county and State, do certify that the foregoing is a true and complete copy of the proceedings of said court in the cause wherein Charles Boutcum and Paul Carrey are complainants, and Edward P. Tesson, Antoine L. Danjen, Abia Minor, Peter B. Garische, and Lamar E. Suber are defendants, for injunction, as the same appears of record in my office, and the papers herewith sent and numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26 are all the papers filed in said cause.

In witness whereof I hereto set my hand and affix the seal of said court at Peoria, this 22d day of February, A. D. 1858.

[SEAL.] ENOCH P. SLOAN, Clerk.

Complainants' costs:—Clerk's fees	$2 45	
Sheriff's fees . . .	3 80	
		$6 25
Defendants' costs:—Clerk's fees		$4 85
		11 10
Sheriff's fees on summons		1 10
		$12 20

A record of the proceedings, in chancery, of the orders, decrees, and proceedings of the honorable Circuit Court of Woodford County,

in the State of Illinois, sitting as a court of Chancery at a special term.

The Honorable James Harriott, Esq., Judge of the Twenty-first Judicial Circuit of said State of Illinois, presiding at a special term of said court, began and held at the court-house, in Metamora, in said Woodford County, on the fourth Monday of the month of March, in the year of our Lord one thousand eight hundred and fifty-eight, it being the 22d day of said month.

Present—Abia Minor, sheriff; and Peter Doty, clerk.

And afterwards, to wit, on Tuesday, March 23d, A. D. 1858, the following proceedings were had, to wit:—

BOUTCUM and CARRY
vs.
TESSON and DANJEN et al. } Injunction. No. 69.

On this day this cause coming on to be heard, motion is made to dissolve injunction, and motion as to jurisdiction overruled, and a motion for leave to file an amended bill, and this cause is continued.

A record of the proceedings, in chancery, of the orders, decrees, and proceedings of the honorable Circuit Court of Woodford County, in the State of Illinois, presiding at a term of said court begun and held at the court-house in Metamora, in said Woodford County, on the fifth Monday of the month of March, in the year of our Lord one thousand eight hundred and fifty-eight, it being 29th day of said month.

Present—Abia Minor, sheriff; and Peter Doty, clerk.

A record of the proceedings, in chancery, of the orders, decrees, and proceedings of the honorable Circuit Court of Woodford County, in the State of Illinois, sitting as a court of chancery, the honorable James Harriott, Judge of the Twenty-first Judicial Circuit of said State of Illinois, presiding at a term of said court, began and held at the court-house in the town of Metamora, in said Woodford County, on the first Monday of October, in the year of our Lord one thousand eight hundred and fifty-eight, it being the fourth day of said month.

Present—Abia Minor, sheriff; and Peter Doty, clerk.

Friday, Oct. 8th, 1858.

BOUTCUM and CARRY
vs.
TESSON and DANJEN. } Injunction. No. 69.

This day come N. H. Purple, solicitor of the defendants, and suggested the death of Antoine L. Danjen since last term of this court, which is admitted by the complainant. Oct. 8th, 1858.

And afterwards, to wit, on same day, the following proceedings were had, to wit:—

CHARLES BOUTCUM, PAUL CARRY, vs. EDWARD P. TESSON, ABIA MINOR, PETER B. GARISCHE, LAMAR E. SUBER. } In the Circuit Court of Woodford County. In Chancery.

This day this cause came on to be heard upon the motion hereinbefore entered to dissolve the injunction issued in this cause, and the same was argued by counsel, and the court having examined the bill, answer, exhibits, affidavits, and evidence on file in said cause, doth order, adjudge, and decree that the said injunction be dissolved.

Oct. 8, 1858. JAMES HARRIOTT.

BOUTCUM and CARRY vs. TESSON and others. } Injunction.

This day come the complainants by their solicitors, and upon their motion, it is ordered, adjudged, and decreed that the complainants' bill be dismissed without prejudice.

State of Illinois, Woodford County, *ss.*

I, Peter Doty, clerk of the Circuit Court in and for said county and State aforesaid, do certify that the foregoing is a true copy of the proceedings of the Circuit Court of Peoria County in said State, as certified to by Enoch P. Sloan, clerk of said Circuit Court of Peoria County, and also of the Circuit Court of said Woodford County, in the cause wherein Charles Boutcum and Paul Carry are complainants, and Edward P. Tesson, Antoine L. Danjen, Abia Minor, Peter B. Garische, and Lamar E. Suber are defendants, for injunction, as the same appears of record in my office, and papers on file in said cause as received from the clerk of Peoria County and numbered in his transcript as follows, No. 1, 2, 20, 13, 19, 25.

In witness whereof, I have hereto set my hand and affixed the seal of said Circuit Court, at Metamora, this 26th of March, A. D. 1859.

[SEAL.] PETER DOTY, Clerk.

The defendants also proved by William T. Bryan, that he is the person of that name whose deposition has been read—says, "when deposition was taken, it was long since I had seen the papers. I made a mistake in supposing the affidavit filed by me, about the time of filing the bond now sued on, embraced a motion for leave of court to file a new bond. I have seen it since, and it does not embrace such motion. I was counsel in the case, and attended to it till the end of the March Term, 1858, of the Woodford Circuit Court, and I never had any notice before, at that time or since, that the motion to dissolve the injunction, so far as based on the want of a sufficient bond filed in time, had been withdrawn—not the slightest. I, at that March Term, argued in court, in presence of Judge Purple,

counsel of the opposite party, my motion for leave to file a new bond. Never knew the bond now sued on had been accepted; understood it to be resisted to the last. On cross-examination:—I remember the counsel of defendants, in the chancery suit, calling up motions to dissolve injunction. I cannot tell exactly when bond now sued on was first brought to Judge Purple's attention. Judge Purple was not present when it was filed with the clerk, nor was he present before the judge in vacation, when I moved for leave to file amended bond. Never had notice of defendants in injunction suit waiving want of bond. The bond now sued on is the only bond I ever had in mind, when seeking leave to file a new bond. I called the attention of the judge to it, Jan'y 12, 1858, at chambers, at the time of making the cross motion to file amended bond. Neither of the defendants herein were present when the bond was filed with the clerk, or at either court, while the injunction suit was pending, so far as I know.

The defendants also proved by Frederick Heinrichs, that on the day first appointed for sale of property on execution, Dec'r, 1857, the sheriff came to where the property was before the coroner came. Mr. Farris said to sheriff, Here is the property—give me my forthcoming bond for personal property. The sheriff then gave up the bond to Mr. Farris—Christian Farris. This was shortly before, or shortly after the injunction was served. The personal property was all on the premises, and in reach of the sheriff.

This witness also proved, that he was present when the bond sued on was signed by these defendants, and that Lamar E. Suber, whose deposition the plaintiff read, was not present. Plaintiff here interposed, and said Suber was not present at the signing of the bond, and that if his deposition so stated, it was an error. Witness said he did not know whether the offer to deliver the property was before or after the injunction was served.

This witness also stated, that the personal property levied upon was not all there at the time the Farrises demanded their bond; some of it had been sold, amounting to $200 or $300 in value; all the personal property that the sheriff levied upon was afterwards sold by Boutcum and Carrey, except what the Farrises sold; the Farrises were living in the neighborhood, and knew of Boutcum and Carrey's selling the personal property.

(Plaintiff's rebutting testimony.)

Circuit Court of the United States, for the Northern District of Illinois, December Term, 1858.

EDWARD P. TESSON, Plaintiff,
vs.
CHRISTIAN FARRIS, PETER FARRIS, defendants. } Debt.

Edward P. Tesson, of St. Louis, in the county of St. Louis, State of Missouri, being sworn, says: that he is the plaintiff in the

above entitled cause; that he is advised and verily believes, that the testimony of Abram A. Van Wormer, Alfred de Clausel, Robert Barth, Lamar E. Suber, and Edmund Menard, of St. Louis, in the county of St. Louis, and State of Missouri, is material and necessary for the said plaintiff, in the prosecution of this cause. That the said witnesses all live at St. Louis aforesaid, more than one hundred miles from Chicago, Illinois, where the court at which this deponent expects the said cause to be tried is appointed by law to be held; and this deponent further says, that he is informed and believes, that said Christian and Peter Farris, the above named defendants, reside at Woodford County, Ills., about two hundred miles distant from the place where the examination of said witnesses is expected to be taken; and that he is also informed and believes, that Messrs. Manning and Merriman, the attorneys of said defendants, reside at Peoria, Illinois, about two hundred miles from St. Louis, Missouri, aforesaid.

EDW'D P. TESSON.

Subscribed and sworn to before me, this 8th day of March, A. D. 1859.

JAMES B. GOFF,
Notary Public within and for the county of St. Louis, and State of Missouri.

Circuit Court of the United States for the Northern District of Illinois, December Term, 1858.

EDWARD P. TESSON, plaintiff,
vs.
PETER FARRIS and CHRISTIAN FARRIS, defendants.

Be it remembered, that on the 8th day of March, A. D. 1859, at Saint Louis, in the county of Saint Louis, and State of Missouri, Edward P. Tesson personally appeared before me, James B. Goff, a Notary Public in and for said county and State, and made oath that he was the plaintiff in a suit then pending in the Circuit Court of the United States for the Northern Circuit and District of Illinois, wherein Christian Farris and Peter Farris were defendants. That the testimony of Abram A. Van Wormer, Alfred de Clausel, Robert Barth, Lamar E. Suber, and Edmond Menard was material and necessary for said plaintiff in the prosecution of such suit, and that the said witnesses lived at Saint Louis, in the county of St. Louis, and State of Missouri, more than one hundred miles from Chicago, Illinois, where the court at which the said plaintiff expected the said cause would be tried was appointed by law to be held; and that Christian Farris and Peter Farris, the above named defendants, resided at and in the county of Woodford and State of Illinois, about two hundred miles from Saint Louis aforesaid; and that Messrs. Manning and Merriman, their attorneys, resided at Peoria, in the county of Peoria, Illinois, about two hundred miles from Saint Louis aforesaid; and the said Edward P. Tesson requested me, that the

said witnesses might be examined according to the directions of the act of congress in such case made and provided.

Whereupon I ordered that the said witnesses should be examined *de bene esse* before me at Saint Louis, in the county of Saint Louis, and State of Missouri, on the 8th day of March, A. D. 1859; and said witnesses appearing before me at Saint Louis, in the county of Saint Louis, and State of Missouri, on the 8th day of March, A. D. 1859, I have therefore proceeded with the examination.

And the said Lamar E. Suber being first carefully examined, cautioned, and duly sworn, to testify the truth, the whole truth, and nothing but the truth, saith:—

My name is Lamar E. Suber. I reside in the city and county of Saint Louis, and State of Missouri. I am twenty-eight years of age, and am by occupation, teller in the banking house of Tesson and Danjen, of St. Louis, Missouri. I am acquainted with all the parties to this suit.

Between the eleventh and eighteenth of October, 1858, Mr. Christian Farris, one of the defendants who gave their bond to secure Tesson and Danjen the payment of their claims against Boutcum and Carrey, was in the office of Tesson and Danjen several times, for the purpose of making an arrangement for the settlement of said claims; of the different conversations, I was present at but two, and then, for not more than half an hour the first time.

During the time I was present, Mr. Christian Farris stated to Mr. Tesson, that if he, Mr. Tesson, should enforce the payment of the bond at that time, it would ruin him; that the bond covered all the property that he and his brother Peter owned; that the bond had been given under and upon the strength of the confidence they, the Farrises, had in Boutcum and Carrey, who were plaintiffs in a certain injunction suit commenced in Illinois, against Edward P. Tesson and A. L. Danjen, and that Boutcum and Carrey had always maintained that they did not owe Tesson and Danjen one half of the amount that Tesson and Danjen claimed of them; that Boutcum and Carrey had by so representing to them, the Farrises, most unmercifully swindled them, and that they never would have given the bond, but that both Boutcum and Carrey had promised that they would, in the course of sixty or ninety days, receive from France about fifty thousand dollars, for the purpose of paying off all their debts, and that that Mr. Carrey started for France a day or two after they swore to the application for the injunction for the purpose of getting the money that they had promised.

Mr. Tesson stated to Mr. Christian Farris, that it was not his intention to ruin him, and that all he wanted was what was coming to him, but that he had no mercy for Boutcum and Carrey, for he thought they were grand rascals, but to make it easy for him, Farris, he, Mr. Tesson, was willing to extend the time for the payment of the debt, if he, Farris, would make a cash payment on account, and give additional security for the balance; subject to the approval of

Judge Purple. Mr. Farris stated that he could not pay just then, but that he was negotiating with parties here, and if successful would do so. This is all I heard of the first conversation. Mr. Farris remained in the office about an hour afterward conversing with Mr. Tesson and Mr. Robert Barth.

At a subsequent period, I think about the 28th of October, 1858, as Mr. Farris was leaving the office of Tesson and Danjen, he stated at the counter of Tesson and Danjen in my presence and hearing, that some parties in St. Louis were about to go up to the distillery formerly owned by Boutcum and Carrey, for the purpose of taking the management of the same, but by that arrangement he would have the amount of his claim against Boutcum and Carrey, and thought he would before concluding this arrangement, go home and persuade the farmers in the neighborhood where he lived, to go in with him and make a joint-stock concern of it, and by that means he would be able to pay Tesson and Danjen their money, and that the farmers would be able by that means to get their money.

In those conversations Christian Farris represented himself as acting for himself and his brother Peter; he also in those conversations expressly admitted that the bond had been executed and delivered by himself and his brother Peter, and that they were liable to Tesson and Danjen on the same; and further deponent saith not.

L. E. SUBER.

And I do further certify that the preceding deposition of Lamar E. Suber, was reduced to writing by me, and signed by the said Suber at the time and place before mentioned after having been carefully read over to him.

Witness my hand and official seal this 8th day of March, 1859.

[SEAL.] JAMES B. GOFF, Notary Public.

Alfred De Clausel being likewise examined, cautioned, and sworn, saith:—

My name is Alfred De Clausel. My age is thirty-seven years. I reside in St. Louis, Missouri. I am by occupation a manufacturer. I know all the parties to this suit. Some time last fall in St. Louis, I think in October last, I had a conversation with Mr. Christian Farris in relation to the bond given by Christian and Peter Farris for the purpose of securing to Tesson and Danjen their claims against Boutcum and Carrey; said Christian Farris said that such a bond had been given by himself and his brother Peter, and that he was very uneasy about it; he said that they considered themselves as ruined by having executed that bond. I advised him to see Mr. Tesson, to see if he could not make some arrangement. He went to see Mr. Tesson, and after he had seen him, I saw him again, when he said he was very much pleased with what Mr. Tesson had said; that from what he had heard from Boutcum and Carrey he had supposed that Mr. Tesson was a very hard man and would push him to his ruin,

but that he had after his conversation with him changed his opinion as to Mr. Tesson's character. I had four or five conversations with Christian Farris on the subject of this bond, in all of which he stated to me that he and his brother Peter had given the bond and considered themselves liable to Tesson and Danjen in the same, and that they considered themselves ruined by executing the same, unless they should be able to raise the money to pay it. In consequence of these conversations I offered my services to Mr. Farris to go to Farnisville, Ills., for the purpose of effecting a sale of the distillery, with a view of releasing the Farrises from their liability on the bond: my services were accepted as a friend by Mr. Farris, and I went there for that purpose, but was unsuccessful; Mr. Farris at that time also stated to me that they, the Farrises, had given the bond and were liable on the same, and that the only chance they had of saving themselves from ruin, was in raising the money to pay the debt.

ALFRED DE CLAUSEL.

And I do further certify that the preceding deposition of Alfred de Clausel was reduced to writing by me and signed by said De Clausel, at the time and place before mentioned, after having been first carefully read over to him.

Witness my hand and official seal this 8th day of March, 1859.

[SEAL.] JAMES B. GOFF, Notary Public.

Robert Barth being also in like manner examined, cautioned, and sworn, saith:—

My name is Robert Barth, I am forty-five years of age, I reside in the city of Saint Louis, and am a commission merchant. I know Edward P. Tesson and also know one of the defendants, but do not know whether his name is Peter or Christian Farris, but it is the one who was at the office of Tesson and Danjen last fall, in October; said Farris came to my store for the purpose of endeavoring to make some arrangement in regard to claims that my firm (Angelrodt and Barth), and the firm of Tesson and Danjen had against Boutcum and Carrey; I had several conversations with said Farris, some at my store, and some at the office of Tesson and Danjen, in which he distinctly admitted that he and his brother were liable to Tesson and Danjen for their claims against Boutcum and Carrey, by reason of having given the bond. These conversations all occurred at the time Mr. Farris was here in October last. These facts are fixed upon my mind particularly by the fact that Mr. Farris stated that he had advanced some five thousand dollars to Boutcum and Carrey, and that they owed him that amount, but that if the distillery could be sold for enough to satisfy our claims and that of Tesson and Danjen, so that Tesson and Danjen would not hold him liable on the bond, he would be satisfied; and further saith not.

ROBERT BARTH.

And I do further certify that the preceding deposition of Robert

Barth was reduced to writing by me, and signed by said Barth at the time and place before mentioned, and that I am not of counsel or attorney for either of the parties to the said suit, nor interested in the event thereof.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at the city of Saint Louis, in the county aforesaid, this 8th day of March, 1858.

[SEAL.] JAMES B. GOFF, Notary Public.

Endorsed: Opened May 4th, 1859, for defts' atty.

WM. H. BRADLEY, Clerk.

State of Illinois, Peoria County, *ss.*

N. H. Purple being sworn, says: that Henry Weeks, John Minor, and Abiah Minor, as he is informed and believes, are material and necessary witnesses in the suit of Edward P. Tesson vs. Christian Farris and Peter Farris in debt, now pending in the Circuit Court of the United States for the Northern District of Illinois, and that said witnesses reside in Woodford County, Illinois, about one hundred and sixty miles from Chicago, the place where the court in which said suit is pending is to be held. N. H. PURPLE.

Sworn to before me this 16 March, 1859.

GEORGE S. BLAKELEY, U. S. Commissioner.

The deposition of Abiah Minor, taken before the undersigned, a notary public in and for Peoria County, on this 31st day of March, A. D. 1859, pursuant to the notice hereto annexed: he, the said Abiah Minor, being first duly sworn, deposes and says, in answer to the first interrogatory—

1st. What is your name, age, place of residence, and occupation?

Answer. Abiah Minor; my age is 33 years; residence, Metamora, Woodford County, Illinois; occupation, farmer; formerly sheriff of Woodford County for two years previous to 4th December, A. D. 1858.

2d. Look at the bond now shown to you, dated Dec. 12, 1857, and filed Dec. 24, 1857, marked "A" No. 1, and state all you know in relation to the same, and what at any time about the time it purports to have been signed you heard Christian or Peter Farris or either of them say in relation to their having executed the same, and what if any advice you gave them or others, gave them about signing said bond, and all that was said by them or either of them in relation to the same, or their liability thereon?

Ans. Just previous to the making of this bond I was informed that Mr. Christian Farris was proposed as security on said bond by Charles Boutcum and Paul Carrey; I was then at Fredericksburg in said county, the town in which Mr. Farris lived, and in conversation with Mr. Farris and others, I advised him not to sign the bond; Mr. Farris' reply was that he did not thank any one for their advice, that he was better acquainted with Mr. Boutcum and Mr. Carrey and their cir-

cumstances than any one else, and that he did not fear that he would ever have the bond to pay, and would not be afraid to sign a bond for double the amount; he spoke at the time that he was satisfied that they were to get a large amount of money from Europe or that he should not have signed the bond; he told me some six months ago that he would have the bond to pay, and that he wished he had taken the advice of those who spoke to him on the subject before he had signed it; he stated further, that if Mr. Tesson commenced suit against him on the bond, he would not defend it, but would take his cane and travel to California or some other place; that is all I ever heard Mr. C. Farris say, and I don't think I ever spoke to Peter Farris on the subject.

3d. State whether you knew or understood, that previous to the execution of the bond you have been speaking of, a bond had been filed which was supposed to be defective and insufficient to sustain the injunction in case of Boutcum and Carrey against Tesson and others?

Answer. I understood that there was another bond that had been objected to; my best recollection is that it was Frederick Heinrichs that informed me of the existence of another bond; it was I believe at Metamora that Heinrichs informed me a day or two after the conversation with Farris.

4th. State whether you was the sheriff of Woodford County who had the execution which was levied upon the personal property of Boutcum and Carrey mentioned in the delivery bond filed with the deposition of Frederick Heinrichs, and if so whether the said Farris or any other person, ever offered to turn out the property levied upon by you, as aforesaid, on the day of sale or at any other time; state fully all that occurred at that time, and what, as near as you can judge, was the value of the property levied upon and receipted to you?

Answer. I was sheriff of Woodford County, and had the execution which was levied upon the personal property of Boutcum and Carrey, mentioned in the delivery bond, filed with the deposition of Frederick Heinrichs. There were none of the defendants ever offered to turn out the property mentioned in said bond, neither the said Farris nor any other person offer to do so on the day the property was advertised for sale nor at any other time. On the day appointed for the sale, a writ of injunction was served upon me by the coroner of Woodford County, and that is the reason I did not make the sale. I have no recollection of seeing either Christian or Peter Forney on that day. I should judge the property was worth about three thousand five hundred dollars as I suppose: in obedience to the injunction, I left the property in the hands of Boutcum and Carrey, defendants in that suit.

5th. Do you know what became of the property levied upon under the execution in favor of Tesson and Danjen, against Charles Boutcum and Paul Carrey?

Answer. Part of the property was disposed of by Boutcum and Carrey, and the balance or nearly all was disposed of by the Farris's after the departure of Boutcum and Carrey.

George H. Stone appeared as counsel for the defendants, and proposed interrogatories as follows:—

Cross-Interrogatory.

1st. At what time did the 1st conversation referred to by you in your answer to 2d direct interrogatory, take place; was or was it not, prior to the time at which the writ of injunction was issued in the case of Boutcum and Carrey against Tesson and others?

Answer. I do not recollect the exact date, but think it was a few days prior to the day appointed for the sale of the property levied on by me, as sheriff of Woodford County, under an execution issued from the Circuit Court of Peoria County on a judgment therein rendered in favor of Tesson and Danjen against Boutcum and Carrey. I never saw either of the bonds filed in said cause before this 31st day of March, A. D. 1859. I referred to no particular bond in my first conversation with Christian Farris, do not know whether it was the first or second bond filed in said cause; in the last conversation I think I referred to a bond, it was the injunction bond on which Mr. Tesson claimed Mr. Farris's liability under. It was a few days after the sale of the real estate of Boutcum and Carrey, on the execution against them in favor of Tesson and Danjen, that the last conversation occurred. I cannot say whether it was the first or second bond filed in said cause between Boutcum and Carrey against Tesson and others. Mr. Tesson offered to pay me one thousand dollars, provided I would effect a cash sale to any one for the amount of his judgment of the real estate of Boutcum and Carrey levied upon by virtue of his execution against them; this was before the sale. I was sheriff of Woodford County at that time and had the execution referred to in my hands.

ABIA MINOR.

State of Illinois, Peoria County, *ss.*

I, Joseph Strafford, a notary public in and for the county of Peoria, and State of Illinois, do hereby certify that I did on this 31st day of March, A. D. 1859, between the hours of 9 A. M. and 6 P. M., at the office of Norman H. Purple, of the city and county of Peoria, and State of Illinois, by virtue of the foregoing notice, take the deposition of Abiah Minor; and I do further certify that before proceeding to take said deposition and at the time and place aforesaid, the said Abia Minor was by me duly sworn to tell the truth, the whole truth, and nothing but the truth, upon all such interrogatories as may be directed to be put by either party litigant; and I further certify that after the said deposition was so taken and reduced to writing, the same was then and there read over to said witness and

by him subscribed and sworn to at the time and place of taking the same.

In testimony whereof, I have hereunto subscribed my name and affixed my notarial seal at my office, in the city and county of Peoria aforesaid, this 31st day of March, A. D. 1859.

[SEAL.] JOSEPH STRAFFORD,
Notary Public.

Endorsed: Opened May 4th, 1859, for defts' atty.
WM. H. BRADLEY, Clerk.

The plaintiff also proved by N. H. Purple that—N. H. Purple stated: I was counsel for the defendants in the chancery suit.

Having examined the bill and the bond filed, I moved to dissolve the injunction, and stated as my reason for the same, that no injunction bond, as required by law, had been filed, and that there was no equity on the face of the bill. This motion, as I judge from the records, was made on the 17 Dec. 1857. The Circut Court of Peoria County was in session; at every convenient opportunity I continued to urge this motion. One morning, between the 17th and 28th Dec., 1857, the precise day I cannot state, I again called the attention of the court to the motion aforesaid, when Wm. T. Bryan, or his partner, Mr. Stone—and which I do not now remember—produced from the file of the papers in the case, the bond sued on in this cause, and called the attention of the court thereto, said, that was a bond made in compliance with the law and the order of the court, or words to that effect. On examining the bond I thought so too. But at the same time stated, as I think, that the parties had no right to file it without leave of court, to make it effective to prevent a dissolution of the injunction. I immediately requested the clerk to make me a copy of the bond duly certified, fearing the original might be lost; he furnished me a copy, which is produced; the certificate of the making of which is dated Dec. 28, 1857. I often tried to get up the motion to dissolve the injunction during the term, but was unsuccessful, except so far as to get a decision of the court against me; that inasmuch as the process was returnable to the next term, the court had not jurisdiction to hear the motion at the present term, but would have such jurisdiction in vacation. I then gave notice, as appears by the record, to dissolve the injunction in vacation. I did not appear before the judge, but left the matter for him to decide. I waited some time, I do not remember how long, and wrote him a note, requesting him to decide the motion. I waited again, until I and the plaintiff in this suit were satisfied that the judge was prejudiced, and I then advised an application to be made for a change of venue, which was done accordingly.

After the bond sued on was filed, to the best of my recollection, I never urged in argument, that the injunction should be dissolved for want of a sufficient bond, although that reason among others remained on file, as one cause for dissolving said injunction.

At the October Term, 1858, when the injunction was dissolved, and the bill dismissed by complainants, the only arguments I made use of for the dissolution of the injunction were:—

1st. That the bill on its face did not show that the complainants were not equitably bound to pay the *the* whole or a portion of the judgment, and that an injunction could only issue to restrain the collection of so much as the complainants showed that they were not equitably bound to pay.

2d. That by the complainants' own showing, by the depositions taken by them, it was manifest that the complainants owed the whole of the judgment which they had confessed in favor of Tesson and Danjen, and more than that sum; that upon this hearing and argument, the court stated, that all it desired to know was, whether the judgment confessed was for a greater sum than was actually due at the time; and also that the court gave as a reason for not having investigated and decided the case in vacation, that he had difficulty in reading the bill, on account of the handwriting in which it was drawn. That I had no recollection, at any time, of Mr. Bryan making or arguing any motion to file an amended bond, or that I ever, at any time, objected to, or resisted any such motion or argument. I drew the draft for the order dissolving the injunction myself.

The defendants moved the court to arrest the judgment herein, because the suit is brought only by one of the obligees in the bond, with no legal reason shown for not joining the others.

Upon the hearing of the motion in arrest of judgment, an affidavit of N. H. Purple was filed and considered by the court: which affidavit is as follows:—

(Affidavit of N. H. Purple.)

In the Circuit Court of the United States for the Northern District of Illinois.

EDWARD P. TESSON
vs.
CHRISTIAN FARRIS and PETER FARRIS.

Northern District of Illinois, *ss.*

N. H. Purple being sworn says, that it appears of record in this cause, that on the 28th Jan'y, A. D. 1859, a rule was entered in this cause, in this court, upon the defendants, to plead by the next Monday morning. On the 31st of January, 1859, leave was granted to the defendants to elect what they will plead. On the 2d Feb'y, 1859, the cause was continued until the next term, by the agreement of parties.

Affiant states, that the cause of this agreement was as follows: The defendants' counsel desired further time to plead in this cause, and plaintiff's counsel agreed to give them 20 days' time to plead, and to continue the cause till next term, provided they would plead

to the merits, and waive all technical objections in regard to the parties to the suit; to which this affiant, as counsel for the plaintiff, assented, and the defendants' counsel also. This agreement was not made in writing, but verbally, in the presence of the court, and as affiant believes, is still so understood and recollected by the court. This is, to the best of my recollection, true. It was my distinct understanding, that all objection on account of improper parties, if there were any, was to be considered as waived, and the suit was to be tried upon its merits. I cannot say that it was so distinctly stated in words. N. H. PURPLE.

Sworn to before me this 7th June, 1859.

FRED. W. COLE, U. S. Com'r.

On examination of the papers filed, I find there is a written stipulation for the continuance, and I was mistaken in supposing there was none. But I still think that all objections as to the parties were agreed to be waived as before stated. N. H. PURPLE.

Sworn to before me this 7th June, 1859.

FRED. W. COLE, U. S. Com'r.

Endorsed: Filed June 7th, 1859.

WM. H. BRADLEY, Clerk.

(Affidavit of E. B. McCagg.)

Circuit Court of the United States for the Northern District of Illinois.

CHRISTIAN FARRIS et al. }
ads. }
EDWARD P. TESSON. }

Northern District of Illinois, *ss.*

Ezra B. McCagg, of said district, being duly sworn, deposes and says that during the December term, last past, of this court, he represented the attorneys for the defendants in the above-entitled cause, and as each representative filed a demurrer in said cause to the declaration of the plaintiff, then on file in said cause, for said defendants' attorneys, and in their names or in the name of Mr. S. W. Fuller, one of them; and that, after the filing of said demurrer, the attorney for the plaintiff in said suit amended his declaration in said suit, and asked for a sale requiring the said defendants to plead to said amended declaration within a very short time.

And this deponent further says that thereupon he insisted that the defendants had a right to plead in abatement to said amended declaration, and that sufficient time should be allowed to enable him to prepare such plea, and sent to Woodford County to have the same sworn to by said defendants, and that after an informal argument, time was given to said defendants for that purpose.

And this deponent further says that, after the above proceedings were had, and before the time last above granted had expired, a written stipulation was entered into in said cause, and now on file

among the papers in said suit, signed by the attorney for the plaintiff in said cause, and by this deponent for said S. W. Fuller, by which further time to plead was given to the defendants, and they, on their part, agreed to plead to the merits.

And this deponent further says, that said stipulation on file in this cause, is the only stipulation entered into in said cause by this deponent with any person whatever; and that neither by parol or in writing did this deponent ever waive or intend to waive any right of the defendants in said cause, technical or otherwise, except the right that he had insisted upon to plead in abatement to said amended declaration. E. B. McCAGG.

Subscribed and sworn to before me, this 12th day of July, A. D. 1859.

[SEAL.] JOHN FORSYTH, Notary Public.

Endorsed: Filed July 13th, 1859.

WM. H. BRADLEY, Clerk.

Which motion the court also overruled, and rendered judgment on the verdict; to all which the defendants there and then excepted, and now pray that this their bill of exceptions be signed, sealed, and made part of the record in the cause.

[Note by the Court.—It is proper to explain the circumstances under which the point referred to in the motion to arrest the judgment arose at the trial and afterwards. There was a demurrer put into the original declaration on the 10th of January, 1859; upon argument the demurrer was sustained on account of some defect of the parties and for want of the necessary averments; at that time some conversation occurred between the court and the counsel of the parties as to the possibility of so amending the declaration as to make it sufficient with the parties then upon the record, and a suggestion was made by the court that perhaps it could be done. Afterwards, under leave from the court, amendments were filed to the declaration. This being done, on the 28th of January the plaintiff took a rule on the defendants to plead by the following Monday (the 31st). No plea was filed on that day; but, on the 2d of February, it was stated by the counsel (both being represented in court) that it had been agreed the cause should be continued, and that the defendants should plead to the merits; and the court understood at the time from what took place then, when coupled with what had occurred at the time the demurrer was sustained, that the question about the defect of parties was not to be further noted; but the court does not wish to be understood that there was an express declaration to that effect made by the defendants' counsel in open court; the attention of the court was not called to the stipulation of the 2d of February, until after the trial. During the trial, the point, as to the defect of parties, was made but not pressed (and by this is meant that, when the objection was made at the trial, the court stated either that it was understood that this was waived, or some-

thing to that effect, to which no reply was made by defendants' counsel). On the motion in arrest of judgment, it was insisted on, but under the circumstances, and especially as it was conceded throughout that no other person than the plaintiff had any legal or equitable right to the money or any part of it sought to be recovered in this cause, the court did not think that so technical an objection ought to prevail, and therefore overruled it. With this explanation the Court signs the bill of exceptions.]

THOMAS DRUMMOND. [SEAL].

Endorsed: Filed October 26th, 1859.

WM. H. BRADLEY, Clerk.

And afterwards, to wit, on the third day of November, in the year last aforesaid, came the plaintiffs in error by their attorneys, and sued out of the Clerk's office of said court this writ of error in said entitled cause, which said writ of error is in the words and figures following, to wit:—

(Writ of Error.)

United States of America, Northern District of Illinois, *ss.*

The President of the United States of America, to the Judges of the Circuit Court of the United States for the Northern District of Illinois, greeting:—

Because in the record and proceedings, and also in the rendition of a judgment in a plea which is in the said court before you, between Edward P. Tesson, plaintiff, and Christian Farris and Peter Farris, defendants, manifest errors have happened to the great damage of the said Christian Farris and Peter Farris, and it being fit that those errors, if any there have been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded if judgment by therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the said record and proceedings being inspected, the said Supreme Court may cause to be further done therein, to correct those errors, what of right and according to law and the custom of the United States should be done.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this third day of November, A. D. 1859, and of our Independence the 84th year.

[SEAL.] WM. H. BRADLEY, Clerk.

Endorsed: Filed Nov. 4th, 1859.

WM. H. BRADLEY, Cl'k.

And on the third day of November in the year last aforesaid, came the said plaintiffs in error and filed in the office of the clerk of

said court their bond in said entitled cause, which said bond is in the words and figures following, to wit:—

(Appeal Bond.)

CHRISTIAN FARRIS and PETER FARRIS
vs.
EDWARD P. TESSON.
} In Error.

Know all men by these presents that we, Christian Farris and Peter Farris, Joseph Farris, Peter P. Farris, Christian P. Farris, and John Schwabb, the last as securities for the first two, are held and firmly bound unto the above named Edward P. Tesson in the sum of fifteen thousand dollars, to be paid to the said Edward Tesson, his executors or administrators. To which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 28th day of October, A. D. 1859.

Whereas the above named Christian Farris and Peter Farris have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the United States Circuit Court for the Northern District of Illinois:

Now, therefore, the condition of this obligation is such that if the above named Christian Farris and Peter Farris shall prosecute his said writ of error to effect, and fully pay and satisfy the said judgment for seven thousand three hundred and ninety-four dollars and ninety-two cents ($7,394 92), and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void, otherwise shall be and remain in full force and effect.

In German. { 1. [SEAL.] 2. [SEAL.] 3. [SEAL.] 4. [SEAL.] 5. [SEAL.]

JOHN SCHWAB, [SEAL.]

Sealed and delivered in presence of SAM'L W. FULLER.
Approved, THOMAS DRUMMOND.

1. CHRISTIAN FARRIS,
2. PETER FARRIS,
3. JOSEPH FARRIS,
4. CHRISTIAN FARRIS,
5. PETER P. FARRIS.

Endorsed: Filed Nov. 3d, 1859.

WM. H. BRADLEY, Clk.

And on the fourth day of November, in the year last aforesaid, came again the said plaintiffs in error by their attorneys, and sued

out of said court the process of citation in said entitled cause, which said citation is in the words and figures following, to wit:—

(Citation.)

United States of America, *ss*, to Edward P. Tesson, greeting:—

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the Northern District of Illinois, wherein Christian Farris and Peter Farris are plaintiffs, and you, Edward Tesson, are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas Drummond, one of the justices of said court, this fourth day of November, A. D. 1859.

THOMAS DRUMMOND.

Endorsed: Filed Nov. 4th, 1859.

WM. H. BRADLEY, Clerk.

In United States Circuit Court, No. Dist. of Illinois.

We, Hoyne, Miller and Lewis, attorneys for Edward P. Tesson, defendant in error in the within entitled cause, do hereby admit service upon me of a true copy of the within citation, at Chicago, in said district, this fourth day of November, A. D. 1859.

HOYNE, MILLER and LEWIS, Att'ys.

Northern District of Illinois, *ss*.

I, William H. Bradley, Clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the foregoing transcript to be a full and correct copy on the record of this court of all the proceedings had in said entitled cause, wherein Edward P. Tesson was plaintiff, and Christian Farris and Peter Farris were defendants, as the same remain of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, on this first day of December, in the year of our Lord one thousand eight hundred and fifty-nine, and of our Independence the eighty-fourth year.

[SEAL.]

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SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1861.

CHRISTIAN FARNIE AND PETER FARNIE, PLFF'S IN ERROR,

vs.

EDWARD P. TESSON, DEF'T IN ERROR.

Statement of the Case.

This is a writ of error to the circuit court of the United States for the northern district of Illinois, to revise a judgment rendered in that court in favor of the defendant in error against the plaintiffs in error.

The leading facts which give rise to the questions of law in this case may be stated as follows:

Tesson and Dangen, who were doing business in partnership in St. Louis, on the 12th of September, A. D. 1857, recovered a judgment for eight thousand dollars in the circuit court for Peoria county, Illinois, against Charles Boutcum and Paul Carrey, who were partners in trade under the name of Boutcum and Carrey. An execution was issued on this judgment directed to the sheriff of Woodford county, Illinois, where the defendants resided, who made a levy on real and personal property of the judgment debtors. Whereupon they filed their bill in chancery in said circuit court for Peoria county, to enjoin their judgment.

They made Tesson and Dangen, together with the sheriff, who held the execution, and two other persons having no interest, direct or indirect, in the judgment, parties defendants to their injunction suit.

The judge who allowed the injunction directed bond to be given in the penal sum of sixteen thousand dollars, conditioned accord-

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ing to law, with Peter and Christian Farnie (the present plaintiffs in error) as sureties. The statute of Illinois prescribes what the conditions of an injunction bond shall be; the principal condition being an undertaking, in case the injunction shall be dissolved, for the payment by the obligors of all money and costs due or to be due to the plaintiffs in the action at law. (Purple's Statutes of 1857, 2d vol., 769 and 770.)

Where, as was done in this case, the court or judge allowing the injunction approves of the security, the statute directs the bond to be entered into before the clerk of the court, and filed by him before the writ of injunction issues. These parties (Boutcum and Carrey, with the Farnies as their sureties) entered into a bond before the clerk, which contained no provision for the payment of the judgment in case the injunction should be dissolved. On the filing of this bond, a writ of injunction was issued, and the collection of the judgment stayed.

Shortly after the issuing of this writ, the defendants in chancery moved the court to dissolve the injunction, assigning several causes for the motion, one of which was that no sufficient injunction bond had been given. Soon after the making of this motion, and while it was still pending, the complainant's counsel, with a view to remedy the defect in the first bond, and thereby retain the injunction, drew up, and procured their clients, with the same sureties, to execute a second bond, the conditions of which do comply with the requirements of the statute. This bond, under their instructions, was filed by the clerk. It was put on file by complainant's counsel, without a new or further order of the court, or of the judge who granted the injunction, and without application for leave to file it. It was also done without the knowledge or consent of Tesson and Dangen or of their counsel. On the 12th of January, 1858, and some few weeks after the second bond was put on file, the counsel for complainants moved the court for leave to file an amended bond, *nunc pro tunc*. (Printed record, page 118.)

This motion does not appear ever to have been called up by counsel or disposed of by the court. Some months later the motion to dissolve the injunction was argued on the merits of the bill, which was for a time held under advisement, when, on the 8th of October, 1858, on examination and consideration, by the court, of the bill, answer, exhibits, affidavits, and evidence on file in the cause, the injunction was dissolved; and shortly afterwards the complainants asked for and obtained leave to dismiss their suit, which was done accordingly. (Record, 123.)

The second bond thus put on file was made payable to all the parties named as defendants in the chancery suit, as well those who had an interest in the cause as those who had none.

Dangen, the partner of Tesson, had in the meantime died; and

on the 16th of December, 1858, the present suit was brought on the second bond in the circuit court of the United States for the northern district of Illinois, by Tesson alone, as surviving partner, and a verdict and judgment were rendered in his favor for seven thousand three hundred ninety-four dollars ninety-two cents. On that judgment this writ of error was brought by the defendants below.

The record shows they made two objections to a recovery in the court below, which are now reproduced as grounds for a reversal of the judgment.

1st. That Tesson cannot maintain an action of debt on the bond in his own name alone, but that the other persons named as obligees in the bond must be joined with him in the suit.

2d. That the execution and delivery of the bond were never completed so as to make it a valid and binding obligation.

In the discussion of these questions I shall have occasion to advert to the facts which bear upon each.

The first objection presents a question of practice, and not of principle. It is a bald technicality, foreign to the merits of the case, and, in the present instance, against its justice and equity.

It has been a rule of practice from an early period of the common law that covenantees may sue separately in covenant, if the interest and cause of action be several, though the covenant be in terms joint; but if an action of debt be brought on the same obligation to recover the penalty for breach of covenant, all the obligees must join in the suit. (1 Chitty's Plead., 3, 6, and 7; Eccleston vs. Clepsham, 1 Saund., 153, and note 1.)

The inquiry naturally presents itself, why was this distinction in the rule of practice where the suit is on the same instrument?

When debt was brought to recover the penalty of the bond, the severe rule of the common law gave judgment for the whole penalty according to the letter of the obligation, and not only shut out all inquiry into the damage which the obligee had sustained, but provided for the obligor no relief in any other form. And so great was this hardship of the common law that the court of equity made relief in such cases one of its special grounds of jurisdiction, which directed an issue of *quantum damnificatus*, and enjoined the excess of the judgment beyond the damage actually sustained. (2 Selwin N. P., 517.)

If the obligee by his action of debt claimed the penalty of the bond according to its letter, it was but just that he too should be held to its letter, and compelled, though his interest were separate, to sue in the names of all the obligees. But if he brought covenant on his obligation, he recovered such damages only as he had actually sustained; and as he thus relaxed his hold upon the letter of the bond, the rule of practice was relaxed also in his favor by allowing him to sue separately, if his interest and cause of action

were separate, though the terms of the obligation were joint. The law remained on this footing until the passage of the statute of the 8 and 9 William 3, ch. 11, sec. 8, which enabled the obligor to compel the obligee in action of debt on the penalty to assign the breaches of the condition of the bond, and limited his recovery to the damage actually sustained.

Since the passage of that statute, the action of debt on a penal bond is virtually put on the same footing with the action of covenant on the obligation. The result of an action on a penal bond, whether debt or covenant be brought, is now substantially the same to both parties to the suit. The English statute on this subject has been everywhere adopted in this country, and the record of this case shows that the plaintiff assigned the breaches of the condition of the bond, and recovered what was equitably due him, being some seven thousand three hundred and odd dollars. When the reason for this distinction in the rule of practice ceased to exist, the distinction itself ought also to have ceased. Rules of practice are adopted to promote and not to defeat justice, and they are accordingly modified to conform to the modifications of the law. And if the rule of practice in this particular has not yet been made to conform to the modification of the law in the action of debt on a penal bond, now is a fit time, and this court is a fit tribunal to do it. In the present state of the law, it is an idle and useless distinction. It is not now even a respectable technicality. But in this case there is another and conclusive answer to this objection, which is, that the plaintiffs in error waived it in the court below; and for that reason, that court overruled the motion to arrest the judgment for that cause. This waiver is now denied, and this court is called upon to go into an examination of the fact of the waiver having been made. Whether this objection was waived or not is a matter of fact, and not of law. The fact of its waiver must be established to the satisfaction of the tribunal where it is made. In such a case as the present it may be done in express terms, written or verbal, or by the conduct of the party making it; and it may be proved or established by evidence to the satisfaction of the court, like any other matter *in pais*.

When, therefore, the court before whom the case is pending is satisfied, from the evidence before it, or knows of its own knowledge, that a defence has been waived, a court of error will not and cannot go into a review of the sufficiency of the proof to establish the fact thus found and acted upon by the inferior court, any more than they can go into a review of the testimony submitted to a jury for the purpose of correcting their conclusions about a matter of fact. In a word, a court of error reviews questions of law only, and not questions of fact, found in the inferior tribunal, whether the finding of the fact be by the court or by a jury; it is enough that it was within the legitimate province of the

court to determine that matter of fact to make its finding conclusive.

But if I am mistaken in this, then let us look into the facts that bear on this alleged fact of waiver.

On the 2d of February, 1859, the counsel in this case entered into a stipulation by which the plaintiffs agreed that the defendants should have an extension of twenty days of a rule to plead beyond the time allowed by the court, and that the defendants should plead to the merits. (Record, page 18.)

It is obvious that by this stipulation each party intended to obtain for himself a substantial benefit, and it should be so construed as to carry that intention into effect. The facts which appear on the record show very clearly what benefit each party sought to obtain. The plaintiffs filed a declaration on this bond on the 28th of December, 1858; and on the 10th of January following, the defendants demurred to the declaration. On argument of the demurrer the objection of want of parties was made and sustained. (Record, 11, 12, and 135.)

Some conversation then passed between the court and counsel as to whether this objection could be obviated by amendment of the declaration, in which the court suggested that perhaps it could be done. (Record, 135.)

On the 27th of January the plaintiff took leave to amend, and on that day filed his amended declaration. (Record, 17.) On the next day, (the 28th,) on his motion, it was ordered that the defendant plead to the amended declaration by Monday morning, the 31st. On Monday the 31st, on defendant's motion, time was given them by the court until Thursday morning following, (the 3d of February,) to elect as to what they would plead. On the 2d of February, the day before the expiration of this extended rule, the parties filed a stipulation in the following words: "The rule to plead in this case is, by consent of parties, extended for twenty days from the expiration of the same, the defendants hereby stipulating to plead to the merits." (Record, 17 and 18.)

From these facts it is plain the plaintiff wanted to get rid of this objection, and the defendants wanted more time to elect what they would plead and to prepare their pleadings.

This stipulation was obviously intended to give to each party the benefit he sought to obtain; and any interpretation of it which will put the plaintiff into a worse condition than if the stipulation had not been entered into, must be contrary to its intent and object. Now, it is admitted by counsel for plaintiffs in error, that this stipulation waived their right to take this objection on demurrer; while, it is claimed by them, it reserved to them the right to avail themselves of it in the subsequent proceedings in the case. (Plaintiff's brief, pages 6 and 7.)

This interpretation would make the stipulation work a positive

injury and loss to the plaintiff below, instead of a benefit to him; for, if this objection was to be insisted upon, it was plainly the plaintiff's interest it should be done at once, on demurrer, without loss of time, and before the expense of a trial was incurred.

There are various facts which show that this defence was waived. The defendants demurred to the plaintiff's first replication to defendants' fifth plea, which demurrer was overruled. (Record, page 25.)

According to the interpretation now insisted upon, the defendants, by pleading to the merits, had executed in full their part of the stipulation before they filed that demurrer; and they were, consequently, at liberty to insist on that objection on that demurrer, which, instead of being overruled, should have been sustained, as they had a right on that demurrer to go back to the first defect in the pleadings; they had the same right to do it then that they had to do it on motion to arrest the judgment, and it is to be presumed they would have done it then, if that defence were not understood to have been waived.

That it was the understanding of the parties and of the court that this defence was waived, is also apparent from what took place on the trial.

Judge Drummond states that the court understood, from what took place when the stipulation was filed, coupled with what had occurred when the demurrer was sustained to the original declaration, that the question about the defect of parties was to be no further noted. And he further states, that, "during the trial, the point as to the defect of parties was made, but not pressed; (and by this is meant, that, when the objection was made at the trial, the court stated either that it was understood that this was waived, or something to that effect, to which no reply was made by defendants' counsel.") (Record, page 135.)

When, on the trial of a case, the judge decides a question of law, it is wholly inadmissible for counsel to tell him that he is mistaken; but if he falls into a mistake or misapprehension about a matter of fact, it is the plain duty of counsel at once to inform him of his mistake; and I have never yet seen the court or judge who was not both willing and anxious to be set right about a matter of fact, if it were done in a respectful and proper manner. But what answer do the plaintiff's counsel make to this statement of the judge? Do they deny that he made this remark to them? Do they deny that they made no reply to it? Do they deny that they did not further press the point? They admit all these statements of the judge. They, however, make an answer to these statements. They say in their brief, at page 8: "The defendants took the objection at the trial, as the court states, when the court said that it was understood that this was waived; so the objection was no further pressed. Now, it requires a 'power of face' not

possessed by any of the counsel who tried this case, for the defendants to insist on an objection in that court after the court has stated it understood this was waived."

If the judge was not mistaken, and the counsel knew he was not, I readily admit it would require a power of face to contradict him; but if he was mistaken, it was the plain duty and interest of the defendants' counsel to speak out at once and say so, and have the matter of fact set right. He who remains silent when it is his duty and interest to speak, will not be allowed to speak afterwards to the prejudice of another. Having remained silent, then, the defendants had no right to make the objection on motion to arrest the judgment, nor to insist upon it in this court as a ground of error to reverse the judgment. The stipulation to plead to the merits was plainly an agreement to waive the objection of want of parties *as a defence to the suit*, and not, as is claimed by the plaintiffs in error, an agreement not to avail themselves of this defence *in a particular form only*, such as by demurrer to the declaration or plea in abatement. This, as has been already shown, would be worse than useless to the plaintiff in the suit.

I now dismiss that topic, and proceed to the discussion of the question of the validity of the bond.

The defendants, by their pleas, denied the factum of the bond, and on the trial insisted that it had been neither delivered nor accepted. Numerous depositions were taken by the parties on this branch of the defence. These depositions were, without objection, read to the jury, and are very improperly and uselessly incorporated into the record. The profession has been repeatedly admonished by this court against the practice of introducing evidence (not excepted to) into a bill of exceptions. (Pennock vs. Dialogue, 2 Pet., 15; Graham vs. Bayne, 18 How., 61.)

In this case they have misled the counsel for the plaintiffs in error into an examination and discussion in his brief of their contents, as though the finding of the jury, to whom these depositions were read, was not conclusive of these facts. This testimony is examined to show that it did not establish the fact of the delivery and acceptance of the bond. (Plff's brief, pages 10, 11, and 12.)

The court cannot and will not look into these depositions or any other evidence bearing upon these questions of fact, which, without being excepted to, were read to the jury. The judge in his charge to the jury, after stating the leading facts bearing on the question of delivery and acceptance, as he understood them, told the jury it was for them to find the facts under the evidence before them. And having so told them, he instructed them in the following words: "If the jury shall find that the bond sued on was executed by the obligors as an indemnity to the defendants in the chancery suit, and placed by their counsel, voluntarily, in court for that purpose, on account of the injunction issued, and with a

view of supplying a defect in the original bond, and was given to the clerk for that purpose by these defendants, or by any one for them, and was filed by him under their instructions, then this court is of opinion, in the absence of any positive act on the part of the State court or of the defendants in the chancery suit rejecting the bond, it would be binding on the defendants." The verdict of the jury establishes all the facts thus enumerated by the judge, and for the purposes of this case they must be taken as true, and cannot be disputed. The question presented by them is, did the judge err when he told the jury, that if they found these facts to be true the bond would be binding on the obligor? For if these facts would establish its validity, then the charge excepted to was correct; if otherwise, it was erroneous. In arguing the question of its validity, I shall, therefore, assume that the bond sued on was executed by the obligors as an indemnity to the defendants in the chancery suit, and placed by their counsel, voluntarily, in court for that purpose, on account of the injunction issued, and with a view of supplying a defect in the original bond, and was given to the clerk for that purpose by the defendants, or some one for them, and was filed by him under their instructions, and that there is an absence of any positive act on the part of the State court, or of the defendants in the chancery suit, rejecting the bond.

The decision of this question, under the foregoing state of facts, turns, as I think, exclusively on the law of the State of Illinois, regulating the subject of taking security on injunctions in chancery of judgments or suits at law in connection with the order of the judge who allowed the writ. I shall, therefore, transcribe each of these in full. The Illinois statute on this subject is in these words, viz: "No injunction shall be issued unless the complainant shall have previously executed a bond with sufficient surety, to the defendant, approved by the court or judge granting such injunction, and filed with the clerk, in double the sum directed to be enjoined, conditioned for the payment of all money and costs due or to be due to the plaintiff in the action at law; and also all such costs and damages as shall be awarded against the complainant in case the injunction shall be dissolved; *or such bond may be entered into before the clerk of the circuit court of the county where the writ is required to be issued, the court or judge granting the injunction having first approved the security.*" (Purple's Statutes of 1857, 2d vol., 769 and 770.)

In the present case the bond was entered into, before the clerk, under the last clause of the section quoted above, the judge who granted the injunction having approved of the Farnies as sureties. The order of the judge, allowing the injunction is in these words, viz: "Let an injunction issue, according to the prayer of the bill, upon the complainants entering into bond in the penal

sum of sixteen thousand dollars, with Christian Farnie and Peter Farnie, conditioned according to law." (Record, page 45.)

It is plain, past all dispute, that, under this law, the order of the judge devolved on the clerk, as a public officer, the ministerial duty of taking the bond. It was a mere ministerial duty, for all the terms and conditions of the bond are prescribed by the order of the judge and by the law. The clerk being thus empowered to take it, a delivery to and acceptance by him was, in law, a delivery and acceptance of the bond. That delivery and acceptance is evidenced by the filing of the bond, which the statute requires to be done. When that is done, if otherwise duly executed, the execution of the instrument is complete, and from that moment it takes effect as a bond. Though the bond is for the benefit of the defendant in the chancery suit; yet, as to him, the taking and execution of it, like the injunction itself, is an adversary proceeding, in which he has no voice, lot nor part. He may make as many objections to it or protestations against it as he pleases, and they will in no wise affect the validity of the bond or prejudice his rights as the obligee, if it has been executed and taken according to the requirements of the law. His acceptance of it was not necessary, nor, under the order of the judge, was its acceptance by the court or by the judge himself necessary. The bond was to be entered into before the clerk—that is to say, it was to be taken and accepted by him in his official capacity. And hence, the several prayers of the defendants to the court to instruct the jury that, if the bond was not accepted before the dissolution of the injunction, by the *obligees* named therein, nor *by the court*, nor by the *judge* who granted the injunction, they should find their verdict for the defendants, were properly refused. These prayers are all based on the implied assumption that the clerk had no authority to accept the bond, and that the acceptance, to be valid, must be by the obligee, the court, or the judge. (Record, pages 28 and 29.)

The question, therefore, returns, did the delivery of the bond by the obligors to the clerk, and his acceptance of it, under the facts found by the jury, establish its validity as a bond? Though the taking of the bond is an adversary proceeding, as against the party whose judgment is enjoined, yet the bond is the consideration or compensation which the law gives him for the stay of execution. It is, therefore, the duty of the clerk to see that he has that compensation secured to him, and it is also the duty of the complainant to give it to him; and without a compliance with that duty, he has no right to an injunction. There having been an omission in the condition of the first bond, of a provision for the payment of the judgment in case the injunction were dissolved, it did not give to the judgment creditors that compensation for the stay of their execution which the law secured to them, and was neither in law nor in fact an execution of the order of the judge, nor a com-

pliance with the requirements of the statute. It was truly said by Judge Drummond to the jury, in respect to this first bond, that "the law makes the clerk the agent of the parties only to receive a good and statutory bond."

But the complainants had got their injunction, (not by the consent of the judgment creditors,) without giving them that compensation which the law secures to them, and which it was their duty to give. They voluntarily entered into the second bond for the purpose of giving that compensation, and now, after having had the benefit of the injunction for near a year before it was dissolved, they turn around and seek to avoid this voluntary act, because they should have done it *sooner*.

The defect in the first bond was their fault, to which the judgment creditors were in no way a party; and it comes to this, that it is now sought by them to take advantage of their own wrong by visiting the consequences of their fault on a party who never consented to their neglect, and had no power to control or prevent it.

The objection that the clerk had no authority to take the bond after the injunction had issued, goes on the ground that the provision of the act that the bond shall be executed and filed with the clerk before the writ shall issue, is *an imperative* and not *a directory* enactment. If this provision of the law be directory, then the bond was well taken by the clerk, because, as a ministerial officer, he simply, in conformity to the statute, executed an order of the judge which had never been carried into effect, nor revoked by him. It is said, however, application should have been made to the court, or to the judge who granted the injunction, for leave to file the new bond. Why go to the court or judge to ask them, if an order already made and not revoked, the execution of which is required by express statutory enactment, should be carried into effect?—for that is simply what an application for leave to file a new bond would have amounted to. And besides, the application to the court or judge, if made, would have carried with it, by necessary inference, an admission that the statute in this particular was merely directory; for, if the provision that the bond shall be executed and filed *before* the injunction shall issue be *imperative*, then neither the court nor the clerk had power to dispense with a strict execution of the letter of the law. If the second bond had been executed and filed *before* the writ of injunction issued under the precise state of facts that attended its execution and filing *afterwards*, there could not possibly be a doubt about its validity. The question, therefore, of its validity resolves itself into and depends for its solution upon this question, viz: Is the provision of the statute of Illinois in respect *to the time when* the bond shall be executed and filed, *imperative*, or it is *directory merely?* I maintain that it is a plain case of a directory law; that, under the circumstances, the clerk had a right, and that it was his duty, to take the bond

when he did for the protection of these judgment creditors, and that an examination of the authorities will show this to be so. Sedgwick, in his Treatise on Statutes, at page 368, after discussing the subject of the interpretation of statutes, says: "Our consideration of the subject will not be complete till we have discussed the very curious class of cases in which the legislative enactment is neither strictly nor liberally construed, but simply disregarded altogether. This takes place where the mandate of the statute is called and regarded *as directory*." He then lays down the law on this subject in these terms: "When statutes direct certain proceedings to be done in a certain way, or *at a certain time*, and a strict compliance with these provisions of time and form does *not* appear *essential* to the judicial mind, the proceedings are held valid, though the command of the statute is disregarded or disobeyed." And after stating that the judicial power to do this must be conceded, he further says, at page 369: "The questions which arise under this head are not properly those of construction or interpretation. The statute is sufficiently clear; the only point is, what shall be the *consequence* of a disobedience of its directions." So, in the present case, it is plain the statute did not intend the injunction should issue before the bond was given. This, as has been already remarked, is a provision for the security and benefit of the party whose suit at law is enjoined, and not of the complainant in chancery, whose duty it is to give the bond.

And the point is, what shall be the *consequence* to the party whose suit is stayed, if the complainant, in violation of his duty, get his injunction first, and give the bond afterwards? In a tribunal where justice is recognised as the fountain of the law, there can be but one answer to this question.

At page 372, the same author says: "Where there is nothing in the nature of a power required to be exercised by a statute showing that it may not be as well exercised *after the time specified* in the statute as before it, and the act conferring the power contains no prohibition against the exercise of it after that period, in such case *the time named is a mere direction*, and not a limitation." The same doctrine is laid down in the case of The People vs. Allen, 6 Wend., 688.

In the present case there is no prohibition in the statute against taking the bond after the writ of injunction is issued. The prohibition is the reverse of that—it is against *issuing the injunction* before bond is taken. For this there is a good reason, because the complainant ought not to have his injunction till he has secured the judgment creditor for the stay of his suit; while, on the other hand, if by mistake, and much more if intentionally, the complainant has got his writ of injunction before giving the security, it is manifest in such case there ought to be no prohibition against his doing his duty by giving the bond afterwards. Justice and

honesty require him to do this. Nor is there anything in the nature of the act of giving the security to justify the inference that the time mentioned in the law is a limitation; and that the bond, if executed after injunction issued, would be therefore void.

In the last named case (People vs. Allen) the court said: "The general rule is, that where a statute specifies the time within which a public officer is to perform an official act regarding *the rights and duties of others*, it will be considered as directory merely, unless the nature of the act to be performed, or the language used by the legislature, shows that the designation of the time was intended as a limitation of the power of the officer." 6 Wend., 487.

What is here said by that court is strictly applicable to the present case. The clerk in taking the bond acted as a public officer in the performance of an official act regarding the rights of others who were absent and adversary parties, and whom it was his duty to protect and secure in their rights; and, as has been already shown, there is nothing in the nature of the act performed by him, nor in the language used in the statute, to show that the designation of the time for taking the bond was intended as a limitation of the power of that officer in that particular.

So, in Colt vs. Eves, 12 Conn., 254, it was ruled, that where a duty is required by statute to be performed on a certain day, and the object contemplated by the legislature could not be otherwise carried into effect, the time prescribed must be considered imperative; but if there is nothing indicating that exact time is essential, it is to be considered as directory. And in the same case, they said: "That the regular administration of justice was not to be defeated by the omission of a public officer to perform a duty at the time prescribed."

Now, in the present case, the object contemplated by the law (viz., securing the party whose suit is enjoined) can be carried into effect, and into full effect, by giving the bond at a time subsequent to that named in the statute. So, in Ex parte Heath, 3 Hill, 47, the court said: "Nothing is better settled, as a general rule, than that where a statute requires an act to be done by an officer within a certain time for a public purpose, the statute shall be taken to be merely directory; and though he neglect his duty by allowing the time to go by, if he afterwards perform, the public shall not suffer by the delay."

Though in each individual case of an injunction suit the taking of the bond affects the parties only to the suit, yet the power conferred on the clerk is for a public purpose, because it is intended for the security of all persons who may be defendants to such suits; and, therefore, this case comes within the rule laid down in Ex parte Heath.

So, in Holland vs. Osgood, 8 Vermont, 280, the court speaking on this subject, said: "Statutes directing the mode of proceedings

by public officers have always been treated as advisory, and not intended to invalidate the *vitality* of the proceedings themselves, unless expressly so provided." It has already been shown there is no such express provision in the Illinois statute; and it may be added, none such can be implied from its object or language.

In Rex vs. Loxdale, 1 Bur., 447, which was several times argued in the King's Bench on this point, Lord Mansfield, in giving his judgment, said: "There is a known distinction between circumstances which are of the *essence* of a thing required to be done by an act of Parliament, and clauses *merely directory*. The *precise time* in many cases is *not* of the *essence*." It need hardly be said, that in the present case, it is manifest, the precise time of giving the bond is not of its essence.

In Martin vs. Hunter's Lesse, 1 Wheat., 304, (3 Pet. Cond. Rep., 603,) it was decided that the provision of the 22d section of the judiciary act of 1789, which requires the judge allowing a writ of error to take a security bond, is merely directory. See, also, Catlette vs. Brodie, 9 Wheat., 553.

As the result of these authorities, it may be confidently affirmed that the claim now set up, that the bond now sued on is void, because not executed and filed until after the injunction issued, is against well-settled law, as it certainly is against the plain justice of the case.

Numerous cases are cited in the plaintiff's brief to prove that there can be no delivery of a deed without a concurrent acceptance by the grantee; from which, because the obligees did not accept this bond, an inference is drawn that it never took effect, and is not binding on the obligors. It is quite unnecessary to comment on these cases, because, with one or two exceptions, which will be noticed, they were all cases of voluntary deeds *inter partes*.

An injunction bond under the Illinois statute is neither delivered to nor accepted by the obligees. These acts are done under the authority of law by the obligors on the one side, and the court, judge, or clerk on the other.

Among the other cases cited by the plaintiff's counsel, a remark of the court in the case of Burgess vs. Lloyd, 7 Maryland, 201, is relied upon to show that the clerk of a court cannot accept an injunction bond. (Plff's brief, page 14.) That is undoubtedly true in Maryland. Chapter 8, sec. 5, of the act of 1723, which regulates the subject of taking injunction bonds in that State, is in these words, viz: "Be it further enacted, That in case any person shall think fit to proceed in equity against any verdict or judgment rendered against him, on his application to the county court, it shall and may be lawful for such *county court* to take sufficient security from such person, with two sufficient sureties, in not less than double the debt and costs recovered against him, for the due prosecution of a writ of injunction in that case." It will be noticed, that, in this

law, the *court alone* is empowered to take the bond. In that case, an injunction bond was found among the papers of an old chancery suit; it had never been filed by the clerk, nor had it any endorsement on it, and there was an absence of all proof as to how or when it came into the hands of the clerk. In commenting on these facts, and on the law of Maryland, the court say: "Delivery to the clerk does not import acceptance and approval, where, as in this case, these depend on the judgment and discretion of a tribunal or person other than the party named as obligee, whose assent the law does not require." What is here said shows that, under the Maryland law, the assent of the obligee is not necessary to its validity; and in the course of their opinion they expressly say so, and also, that the court alone could accept and approve the bond, and that the clerk had not been intrusted with the power to do it.

The plaintiff's counsel also refer to the case of ~~Kendrick~~ vs. Martin, 10 Richardson's (S. C.) Rep., 428, to prove that an injunction bond, if given when not required by law, cannot be recovered on. In that case, a commissioner in chancery had granted an injunction inhibiting the defendant in the suit from taking a slave out of the State, and required him to give bond with surety for the observance of the injunction. It was held that the bond was void, because the commissioner had no power to require security in such a case; that having no jurisdiction to make such an order, the whole proceeding under it was void. The case of Perry vs. Hensley, 14 B. Monroe, 174, cited by plaintiff's counsel, proceeds on the same principle. In the present case, there is no pretence that the judge granting the injunction had not the power to require security for the stay of execution, nor that the bond now sued on contains any provision or condition not authorized by the statute.

The plaintiffs in error seem to place some stress on the fact, that some time after the bond was filed by the clerk, they moved the court for leave to file an amended bond; which motion was never called up by them, nor disposed of by the court. The execution of the bond, as we claim, was complete when it was filed with the clerk, and from that moment it took effect as a bond.

Nothing is better settled, than that where a bond or deed is one executed and delivered so as to give it vitality, no subsequent act of the grantor can have the effect of divesting a right or title already vested in the grantee. (10 Barr., 289, 290. 1 John. Chy. Rep., 240. Garnous vs. Knight, 5 Barn. and Cress., 671.)

But independent of the question whether this bond can be sustained as a statutory bond, there would seem to be no doubt it would be held valid as a common law obligation. It was voluntarily made. It imports a sufficient consideration. It is between parties capable of contracting. It is for a lawful purpose, and for the use of parties who were damaged by the proceeding, in consideration of which it was given—that is to say, by the stay of ex-

ecution by injunction. In the case of Todd vs. Cowell, 14 Illinois, 72, a bond was made by a public officer, as a security for money that might be received by him in his official capacity, but not in conformity to the requirements of the statute. It was nevertheless held by the supreme court of Illinois to be good, as a common law bond. The court said, "It is not pretended that this is such an official bond as the school commissioner was required to execute. The statute required him to execute an official bond, payable to the people, and upon which it is provided that an action may be maintained for the use of the township or fund injured by breach thereof. As upon a statute bond, therefore, this decision cannot be sustained. If supported at all, it must be upon the principles of the common law. We are not aware of any principle of the common law which requires us to hold this bond to be a nullity. It imports a sufficient consideration. It is between parties capable of contracting, and is not for an illegal purpose. It is for the use of parties who have a legal right to have its condition performed."

So, in Smith vs. Whitacre, 11 Illinois, 419, which was an action on an appeal bond for the appeal of a suit from the judgment of a justice of the peace to the circuit court. The court said: "The fact that the penalty is not precisely double the amount of the judgment will not vitiate the bond;" and they further said, "but if the statute was imperative, the bond would not be void. It would still be good as a voluntary obligation, based on the valuable consideration of having the case reviewed in the circuit court, and of delay to the appellee in the collection of his judgment." So, in this case, we may in like manner say this bond is good as a voluntary obligation, based on the valuable consideration of having the judgment reviewed in chancery, and of delay in the collection of it by the stay of execution. Regarded as a common law bond, therefore, there can be no question about the sufficiency of its delivery, even if that inquiry were not closed by the verdict of the jury.

The subject of the sufficiency of the delivery of a deed to give it effect, as an obligation, is very elaborately considered in the case of Blight vs. Schenck, 10 Barr, 285.

The court say: "Delivery to a stranger will be a sufficient delivery if he has authority to receive it, or *if made for the use and benefit of the grantee. Delivery to a third person for the use of the party in whose favor the deed is executed, where the grantor parts with all control over the deed, makes the deed effectual from the instant of such delivery,* although the person to whom the deed is so delivered be not the agent of him to whose benefit the deed is made."

The court further said, that if the grantor parted with the control over the deed without any qualification, the title vests the instant it is so delivered. That the declarations of the intention or understanding of a grantor different from the intent apparent on

the face of the deed, or of a condition annexed to it, to be effectual must be made at the time of executing it. That it is the duty of the grantor to speak *then* and declare his intention, if any he has, inconsistent with the natural and necessary result of the solemnity, and that he will not be permitted to do it afterwards. (1 Johns. Chy. Rep., 240. Garnous vs. Knight, 5 Barn. & Cress., 671. Touchstone, 57.)

In conclusion, I think it may be safely affirmed, that the bond now in question is a good and valid obligation, whether viewed as a statutory or common law bond, and that there is no error in the instructions of the court to the jury, nor in overruling the motion to arrest the judgment for want of parties to the suit, after that defence had been waived by the defendants.

S. F. VINTON,
For Def't in Error.

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IN THE

SUPREME COURT

OF THE UNITED STATES.

CHRISTOPHER FARNI Et al
Appellants.

vs.

EDWARD P. TESSON,
Appellee.

December Term, 1860.

No. 139.

ARGUMENT OF S. W. FULLER,

For Appellants.

CHICAGO:
BEACH & BARNARD, PRINTERS, 14 SOUTH CLARK STREET.
1860.

IN THE

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December Term, 1860.

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CHRISTOPHER FARNI Et al
Appellants.

vs.

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Appellee.

POINTS AND ARGUMENT

OF APPELLANTS.

This was an action of debt on an injunction bond, brought by Tesson against the Farni's.

There was a trial by jury, and a verdict and judgment in favor of Tesson.

Two main objections were made by the Farni's to the recovery in this suit:

FIRST, That the bond sued upon was never delivered by the obligors.

SECOND, That this suit was wrongly brought in the name of Tesson alone, and that the other obligees named in the bond, should have been joined with him as plaintiffs.

Although the record is a long one, yet it is believed that the following is a plain, true and brief

STATEMENT OF FACTS:

The bond sued on is set out at length on pages five and six of the printed record, and appears to be a *joint obligation* by the two Farni's, together with two other persons named, Boutcam and Carey, to pay Edward P. Tesson and four other persons, also *jointly*, seventeen thousand dollars as a penal sum, to secure the several undertakings set out in the subsequent part of the bond.

The original declaration appears on pages 7, 8, 9, 10, 11 of the record, and is an action of *debt on the penalty of the bond*, in the name of one of five joint obligees against two of four joint obligors.

The plaintiff to avoid the objection of non-joinder of the other obligees averred on page 10, that he was the only one interested in the judgment enjoined; that Miner, one of the obligees, was the sheriff who held the execution enjoined, and the other obligees were merely the agents or trustees of Tesson.

Only the Farni's were ever sued or appeared in this suit; they demurred to the declaration, page 11–12, and the plaintiff amended his declaration, pages 12, 13, 14, 15, 16 and 17, but the parties are the same—the form of action is the same in the amended as in the first declaration, and the averments of the several and separate interests of the parties to the bond remain the same and will not be further referred to.

On the 25th of January, 1859, (page 17) this amended declaration was filed.

February 2d, 1859, (page 18) by consent of parties, the time for defendants to plead was extended twenty days, and they stipulated to plead to the merits.

February 26th, 1859, defendants filed their plea of *non est factum*, with an affidavit that the writing sued on was never delivered by them, (page 19).

Replication was filed to this plea and issue upon it to the country, and a verdict and judgment in favor of plaintiff, (page 20).

And here we rest in the statement of facts, to examine the second question suggested as forming one ground of the defence, viz: that this action cannot be maintained by the present plaintiff alone, but that all the obligees should have been joined as parties plaintiffs.

The penalty of the bond on which this action is brought is fully set out on page 9 of the printed record. It is a joint undertaking by four persons to pay five others jointly the sum of $17,000.

Two of the obligees were the plaintiffs in the judgment enjoined; two others were agents or trustees for them, and the fifth was the sheriff, who had the execution enjoined.

The sheriff, Miner, one of the obligees, was a citizen of Illinois of the same State as the defendants in this case, so the plaintiff avers on page 14, and so the fact was.

This contrivance in pleading was therefore resorted to to support the jurisdiction of the United States Court; for, if the suit had been brought in the name of all the obligees, it must have failed, because one of the plaintiffs, Miner, would have been a citizen of the same State with the defendants.

Can this pleading be supported by the authorities?

It must be kept in mind that this is an action of *debt* on the *penalty of the bond*, and that all the authorities make a wide distinction between this form of action and one of *covenant upon the undertakings* in the conditional part of the obligation and most, if not all, the cases turn on this distinction.

Keeping this in mind we refer to 1 Williams Saunders, 291, 1st Am. Ed. *Cabell vs. Vaughan*, where it is said "all the obligees or covenantees, if alive, ought to join in the action; if dead, that fact should be averred."

(The plaintiff in this case averred in substance that the obligees not joined were still alive.)

See authorities cited in that case—

1 Chitty's Pleading, 9.
1 Saunders' Pl. & Ev. 9.
Pearce vs. Hitchcock, 2 Comstock, 388.

Where this common law rule is explicitly stated by JEWETT

and BRONSON, Justices; the latter Judge says that "in debt on a penal bond *all* the obligees *must join*, page 392.

19 Wendell, 527.
Arnold et al vs. Talmadge.

But the case of *Baily vs. Powell*, 11 Missouri, 414, is precisely like the present one. It was debt on an injunction bond, and contained the same averments of a *several interest* in the *plaintiff*, yet the court held that those averments did not help the want of parties.

In *Sims and Hollis vs. Harris*, 8 B. Monroe, 55, the same point is decided in the same way, and the distinction between actions of debt for the penalty and covenant on the undertakings in the conditional part of the bond clearly pointed out.

3 Alabama, 593.
Gayle et al vs. Martin et al.

II.

How may this defect of parties be taken advantage of?

By demurrer, plea in abatement, objection at the trial or by motion in arrest of judgment, or by writ of error.

1 Chitty's Pleadings, 12 a.
Cabell vs. Vaughan, 1 Saunders' Rep. 291 h.

Cases in notes and all the text books on common law pleading.

The defendants never made any answer to the amended

declaration, except by pleading to the merits. They demurred to the original one, page 11; after that a new declaration was filed differing greatly from the first.

Defendants in this case moved in arrest of judgment, (page 26) the court overruled it, and on pages 135–6 gives the reason for its decision.

The objection for want of parties is believed to be well taken and the only answer that has or can be made to it is, that it has been waived by the defendants by their stipulation to plead to the merits, (page 18).

Here is the sole ground on which plaintiff tries to maintain his pleading, and it is believed that this Court will not overturn a well settled rule of pleading to avoid an objection to the jurisdiction of the Federal Courts: for, if the plaintiff amends by making the other obligees parties, he amends himself out of court as above stated.

Now what does the stipulation waive?

Plainly nothing more than this, that the defendant will not demur or plead in abatement for the non-joinder of the other obligees, which modes of taking that objection are anterior in the order of pleading to a plea to the merits, for after pleading to the merits there were three modes of taking the objection—either to object at the trial, motion in arrest of judgment, or by writ of error.

Had they pleaded to the merits *without* a stipulation, it would only have waived the right to demur or plead in abatement.

The other modes of taking the objection would have still been left, and we are unable to see how a plea to the merits

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pursuant to a stipulation to do so, can be held a waiver of any right which it would not have been, if pleaded without such stipulation. If amounted merely to this: that the defendant waived the right to demur or plead in abatement, reserving the right to take the objection in any other form allowed by law; but it is insisted by Judge PURPLE, in his affidavit, pages 133–34, of the record, that all objections, for want of parties, were to be waived.

When he made this affidavit, he had forgotten the stipulation, page 134. On seeing that, he thinks there was some agreement outside of it, but this is answered fully by the affidavit of Mr. McCAGG, page 134, who drew the stipulation and signed the name of Mr. FULLER to it, for the reasons stated in the affidavit.

This, we think, disposes of the position that the defendants have waived their rights to make this objection. But there is an extraordinary note by the Court, pages 135–6, which demands remark.

This note looks like an attempt to give a good reason for an erroneous decision. The Court say, page 135, that "A suggestion was made by the Court, that perhaps" the declaration could be amended so as to support this form of pleading, and the Court gave leave to file such amendments.

The Court will see by the case cited from 11 Mo. 414, *Baily vs. Powell*, that such an amendment cannot relieve the difficulty.

The Court then states, that "it understood from what took place between the counsel" at that time, that this objection was waived, but says, it "did not have this understanding from any express declaration of defendant's counsel."

It seems needless to remark, that when an agreement between counsel, like a contract between parties, is reduced to writing, that neither the Court nor anybody else has a right to "understand" anything but that which is contained in the writing.

The defendants took the objection at the trial, as the Court states, when the Court said that it was understood that this was waived, so the objection was no further pressed. Now, it requires a "power of face," not possessed by any of the counsel who tried this case for the defendant, to insist on an objection in *that* Court, after the Court has stated "it" understood this was waived.

This is understood in that Court, at least, as an intimation to counsel, that that matter has been disposed of by the Court, and as over-ruling the objection. But the Court, at last, says, that "especially" because it was conceded throughout the trial, that no other person but the plaintiff, had any legal interest in the recovery in this cause, it over-ruled this technical objection. To all this, it is answered, that the reason given by the Court for over-ruling the motion is expressly decided to be a bad one in the cases cited from Mo. Ky. and N. Y. above, and unless this Court is prepared to break down well established distinctions and rules of pleading for the purpose of giving the Federal Courts jurisdiction where they would otherwise not have it; this objection was well taken, properly invested on and ought to prevail.

Miner, the sheriff of Woodford County, Ill. one of the obligees with the plaintiff in the bond sued on, had an interest in the bond, for it was his only security and protection for not proceeding in the execution in favor of plaintiff and Danjen vs. Boutcam and Carey; he had a right in the bond for this pur-

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pose and might bring an action of covenant on the condition in the bond, and so might any of the other obligees in the bond bring actions of covenant on it and each of its conditions in their favor, but when they resort to the *joint penalty* of the bond, running to five of them jointly, they must, if living, all join in the action of debt therefor, or else the authorities and principles of the common law are to be entirely overturned, merely in a few cases to give the Federal Courts jurisdiction where otherwise it would be excluded by the law and all the decisions relating to that subject.

In short, the plaintiff filed a declaration which was demurred to (page 11); he then amended by filing two new counts (pages 12, 13, 14, 15, 16 and 17) to which the defendants stipulated that they would plead to the merits (and this was all the answer they ever made to it.) They did plead to the merits; at the trial, insisted on the objection; the Court overruled it then—overruled the motion in arrest, because he thought the objection too technical to be sustained; yet the authorities all say that the objection was a good one at any stage of the proceedings and ought to prevail when insisted on.

There s no surprise to plaintiff in this, for he has deliberately taken the hazard of trusting that the Court would disregard long and well settled rules of common law pleading, in order to extend the jurisdiction of the Federal Courts.

The second ground of defence is, that the bond sued on was never delivered by the obligors and accepted by the obligees.

The attention of the Court is called to the instructions asked by defendants on trial, on pages 28 and 29, and the instructions given by the Court on pages 29, 30 and 31.

Tesson and Danjen, September, 12th, 1857, recovered a

judgment vs. Boutcam and Carey for $8,000, pages 34 and 35. Execution issued and was levied on property of Boutcam and Carey, pages 35 and 36. These last filed their bill in equity to enjoin the proceedings under that execution, pages 38 *et seq*, but none of the proceedings in this chancery case are important, except those to which we will particularly call the attention of this Court.

December 12th, 1857, an injunction was allowed according to the prayer of the bill on filing bond, conditioned according to law, page 45, and injunction issued.

It is agreed on all hands, that the injunction bond first filed was not conformable to the order of the Court, and on the 17th December, defendants moved to dissolve the injunction, page 49. This was in Peoria County, Ill. The venue was changed to Woodford Co., Ill, and injunction dissolved and bill dismissed, page 91.

While the case was pending in Peoria County, the defendants moved to dissolve the injunction; among other reasons, because no sufficient bond had been filed, pages 117 and 118 of record, and the plaintiff made a cross motion to file an amended bond *nunc pro tunc*. These two motions were pending and undetermined until the final dismissal of the bill, and we will now point out all the parts of the record which bear on the question of the filing and delivery of the bond now in suit.

Stone, a witness for the defendant, swears that he received a notice from Judge PURPLE, of a motion to dissolve the injunction for insufficiency of the bond (pages 94 and 95.)

Bryan, a witness for defendant, states fully all the facts,

(pages 97, 98, 99) and that after receiving notice of the motion from Judge PURPLE to dissolve the injunction, he prepared a new bond, handed it to the Clerk where the suit was pending, who marked it, filed December 24, 1857, and moved the Court for leave to file it.

At page 99 of record, it is stated that no leave was ever granted in the case to file any bond, other than the original one, and the Judge who tried the case, at the bottom of page 102 states, that he never gave any leave to file it.

The testimony of Bryan, pages 97 and 98, of Powell, pages 101 and 102, and of Judge Purple, pages 132 and 133, contain all the evidence there is in this very voluminous record, bearing upon the execution, filing, delivery and acceptance of this bond — and in connection with the charge of the Court, pages 29, 30 and 31, contain all the matter necessary to be examined by the Court in considering this question, and may all be reduced to this brief statement:

On the 12th of December, 1857, a bill was filed praying an injunction, and a bond filed at the same time, which was insufficient. A motion was made by the defendants to dissolve the injunction, because there was no sufficient bond. The complainants then procured the bond now in suit, handed it to the Clerk of the Court, who marked it filed on the 24th December, 1857, and made a motion for leave to file it. This motion, the defendants resisted, and it was never decided; but the defendants, in that suit, all the time insisted that the injunction should be dissolved — because no sufficient bond was filed before it issued. The bond first filed, was only formally, not substantially, defective; and the only question now or ever made upon the second bond is, whether or not it was ever delivered by the makers and accepted by the obligees, so as to

become a binding obligation on the part of the obligors. By inadvertence of the counsel, who made the bill of exceptions, there is a great deal of irrelevant and useless matter incorporated therein; but, begging the indulgence of the Court, for the presence of so much useless matter, we believe we have referred the Court to everything material in the bill of exceptions necessary, in order rightly to understand the facts on which the question of delivery rests — being the instructions asked by defendants and refused by the Court, and the instructions of the Court, as given on pages 28, 29, 30 and part of page 31. The deposition of Bryan, pages 97, 98, 99, 100, of Judge Powell, at the bottom of page 102, and of Judge Purple, page 132.

WAS THIS BOND DELIVERED?

Delivery implies acceptance — without acceptance, there can be no delivery. The acts are concurrent. A tender or offer by the grantor or obligor must be made and existing at the time of acceptance, in order to make a complete delivery, vesting an estate in or interest under the instrument.

There may be a continuing offer from a given date; but, if that offer is not accepted before withdrawn, no interest or estate passes. If a willingness to accept the instrument offered is not shown till the offer is withdrawn, it amounts to nothing.

The office and intent of an injunction bond is to support the injunction, that is the consideration for it. In this case the injunction writ had issued before the bond sued upon was filed. That bond was placed on file without leave of the Court; no leave to file it was ever given, although the complainants asked leave to file it. The defendants opposed that request and in-

sisted on the dissolution of the injunction for want of a bond. The Court never granted the leave.

The injunction did not rest upon, nor was it supported by this bond, because it was allowed and issued upon the bond first filed; and upon that first bond, these defendants insist that complainant has a complete remedy, if anywhere; for the testimony of both BRYAN and PURPLE show that the bond first filed was defective only through inadvertence, and not purposely made so, to defraud the Court; and in proof of the good faith in executing the first bond, they prepared and tendered the bond sued on.

Now, when was this bond accepted so as to make the tender or offer to deliver, complete? Certainly not, when the defendants gave it to their counsel, Bryan, for he was their agent and not the agent of the other party; certainly not, when Bryan, on the 24th December, 1857, gave it to the clerk, who marked it filed, because he had no right to place it on file without leave of Court, which leave the Court never granted, and the defendants in that suit always resisted the motion for leave to file it; it never in any manner supported the injunction, and now, in the language of the instructions asked, on page 29, should the defendants be allowed to hold the bond as an obligation binding the obligors, and yet all the time from the date of its appearance among the files of the cause in the Court down to the final determination of that cause, they resisted and rejected it, until they brought this suit to recover upon it. It was offered by the obligors to support the injunction; it was rejected by the obligees for that purpose; but they now claim to hold it for another purpose, as if the grantee in a mortgage deed should say, when it is offered him, "I won't take it as a conveyance of the estate to me by way of security, but I will hold it for the purpose of suing you and recovering upon the

covenants in the deed." It seems to us that they must take the obligation for the purpose for which it is offered, or reject it entirely; and they ought not to be allowed afterwards to retain it for another purpose — thus themselves taking all the benefit under it, and imposing on the obligor all its burden without receiving any benefit under it, and so, we think, are the authorities, as follows:

Burgess et al vs. Lloyd, 7 Maryland, 178, was an action of debt on an injunction bond.

On page 201 the Court say:

"Delivery to the clerk does not import acceptance and approval, where, as in this case, these depend on the judgment 'and discretion of a tribunal or person other than the party 'named as obligee, whose assent the law does not require."

Now, this bond required the assent of the Court, in order to become a part of the record; or, of the obligees, in order to make it binding. Such assent was never given to this bond. See page 201, *et seq* of this opinion, and cases cited from the Maryland Reports.

The complainants were required to file a bond before injunction writ issued. They filed a defective one, and the injunction issued. If any bond was filed after that time without leave of the Court or assent of the defendants, it was without consideration of benefit to the obligors, or damage to the obligees. And so this bond was a mere idle paper on the files of the Court. Injunction bond, if given when not required by law, cannot be recovered on.

Fant vs. Martin, 10 Rich. (S. C.) 428.

Delivery bond for property, exempt by law, is without consideration, and will be enjoined though voluntary.

Perry vs. Hensley, 14 B. Mon. 474.

There can be no delivery of a deed without a concurrent acceptance.

Hulick vs. Scoville, 4 Gilman, (Ill.) 159.
Jackson vs. Dunlap, 1 Johnson's Cases, 114 *et Note*, Ed. '46.
Jackson ex dem Eames vs. Phipps, 12 Johnson, 413.
Jackson vs. Richards, 6 Cowen, 617.
Church vs. Gilman, 15 Wend. 656.
Crosby vs. Hillyer, 24 Wend. 284.
Butler & Baker's case, 3 Coke's Reports, 26 and 27.
1 Coke on Littleton, 36 *a* note 6.
Warren vs. Swett, 11 Foster, (N. H. 340.
Blight vs. Schenck, 10 Barr, 285.

The above are only a few of many cases that decide explicitly, that there must be an acceptance, to render an offer to deliver a complete delivery.

Had this been a deed of land, there could not be a doubt that there was no delivery.

Even recording a deed, will not vest an estate in the grantee if he rejects it, as the cases cited above, abundantly prove.

But until the Court had granted leave to file, or the defendants had assented to the filing of the new bond, it was in the clerk's hands merely as a custodian for the obligors.

The obligors had no consideration for its execution, as above stated, nor the obligees any damage or delay from it, and when the Court suggested, on page 31, that "Tesson and Danjen

could have resisted the original bond and objected to it, &c.," it is respectfully submitted that the Court mistook the point, for Tesson and Danjen objected to the continuance of the injunction for want of a bond, such as the law requires.

The first one was filed in pursuance of the order of the Court and was properly on file, but the last one never was on file by leave of the Court. The writing "filed" on it by the clerk, did not make it part of the record any more than it would any irrelevant paper, and until the defendants assented or the Court granted leave to file it, it remained as an instrument tendered on the one side, refused on the other, and never allowed to have the effect of supporting the injunction for which purpose only it was offered, and it ought not now to be allowed a different operation than it was intended to have, but failed to have, by the non action of the Court and the continued dissent of the defendants.

SAMUEL W. FULLER.